

Volume 8

Pages 1569 - 1788

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CR 14-102-CRB
	)	
IAN FURMINGER and EDMOND ROBLES,	)	
	)	San Francisco, California
Defendants.	)	Monday
	)	November 24, 2014
	)	8:51 a.m.

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TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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BY: JOHN HENRY HEMANN  
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For Defendant Ian Furminger:  
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Official Reporters, U.S. District

Court

(Appearances continued, next page)

**APPEARANCES, CONTINUED:**

**For Defendant Edmond Robles:**

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**BY: TERESA CAFFESE, ESQ.  
HEATHER KELLY, ESQ.**

**Also Present:**

**Defendant Ian Furminger  
Defendant Edmond Robles  
Special Agent Melissa Patrick  
Special Agent Sandra Flores  
Dalida Vartanian  
Stephen Janick  
Alycee Lane  
Jerry Chang, Esq.**

1 **MONDAY, NOVEMBER 24, 2014**

**8:51 A.M.**

2 **P R O C E E D I N G S**

3 (The following proceedings were held in open court,  
4 outside the presence of the jury:)

5 **THE COURT:** Okay. Let the record show --  
6 Mr. Furminger is not present. Is he available, Mr. Getz?

7 **MR. GETZ:** I thought he would be here by now. I  
8 don't know exactly why he is not.

9 **THE COURT:** Well, could we have a conversation?  
10 We're not going to take any testimony right now, obviously.

11 **MR. GETZ:** Yes. Pursuant to Rule 483(C)(3), I'd ask  
12 the Court can waive his appearance for this. And I have  
13 discussed it with him.

14 **THE COURT:** So I just want to, sort of, get  
15 scheduling. I also want to address your motion that I got,  
16 that I recently received.

17 So where are we on scheduling and so forth?

18 **MR. HEMANN:** So, Your Honor, we have witnesses that I  
19 would anticipate would take us to approximately 10:30.

20 **THE COURT:** Okay.

21 **MR. HEMANN:** Maybe 11:00, depending on the length of  
22 cross.

23 **THE COURT:** Okay.

24 **MR. HEMANN:** Is that right?

25 **MR. VILLAZOR:** Yes.

1           **THE COURT:** And by that you mean that at that point  
2 the government rests?

3           **MR. HEMANN:** Correct, Your Honor. We want to read  
4 the stipulation and things like that.

5           **THE COURT:** Yeah. Fine, fine, fine.

6           **MR. HEMANN:** But I'm thinking 10:30, 11:00'ish.

7           **THE COURT:** Okay. That would then turn us to the  
8 defense. And --

9           **MR. GETZ:** My witness, Stephanie Furminger, will be  
10 here at 10:00. And I'm prepared to put her on as soon as the  
11 government rests.

12           **THE COURT:** Okay. And it'll be noted for the record  
13 you'll make a Rule 29 motion, and I'll take it under  
14 submission.

15           **MR. GETZ:** That's fine. I filed one --

16           **THE COURT:** Sergeant Furminger is here now. That's  
17 fine.

18           **MR. GETZ:** Thank you.

19           **THE COURT:** And do you contemplate more than one  
20 witness?

21           **MR. GETZ:** The second witness would depend on whether  
22 the Court allows the evidence that we moved to exclude last  
23 night of a text message, which is the sole remaining text  
24 message issue between the parties. The government wants to  
25 offer it. I think it shouldn't be admitted.

1 If the Court permits the text message to be admitted, then  
2 I'm going to call as a witness the recipient of the message to  
3 explain its meaning. And she told me she would be here at  
4 12:30. So I would be able to put her on at 1:00 o'clock.

5 **THE COURT:** All right. Okay.

6 You do not intend to call Sergeant Furminger?

7 **MR. GETZ:** That is correct.

8 **THE COURT:** Okay. Ms. Caffese.

9 **MS. CAFFESE:** Thank you, Your Honor.

10 **THE COURT:** Good morning.

11 **MS. CAFFESE:** Good morning, Your Honor.

12 Subject to the -- any stipulations that we may have, we do  
13 not intend to call any witnesses. We will make -- for the  
14 record, we would be making a Rule 29 motion also.

15 **THE COURT:** Okay. So, in any event, we will conclude  
16 today in terms of both sides' evidence preparation?

17 **MR. VILLAZOR:** Yes, Your Honor.

18 **MR. HEMANN:** Yes, Your Honor.

19 **MR. GETZ:** Correct.

20 **THE COURT:** So then what I intend to do is the  
21 following, subject to your approval: To adjourn the jury  
22 until Monday of next week; to go over jury instructions  
23 tomorrow or this afternoon, whenever you want to do it; to  
24 have argument commence Monday of next week.

25 I will cancel my trip and be here for the duration of next

1 week in the event that the jury has any questions concerning  
2 any matters, because I cannot in good conscience -- and  
3 occasionally good conscience has a way of working its way in  
4 here -- simply leave the jury and try to do it all by  
5 telephone.

6 So I will -- we'll have argument then on Monday of next  
7 week, and it will be sent to the jury at that time. Because  
8 of Thanksgiving, obviously, we can't do it this week. And I  
9 do not like the idea, but, again -- this is subject to your  
10 discussions -- I mean, theoretically we could have argument  
11 tomorrow and then a week's hiatus.

12 But we can't -- I can't bring them in the Wednesday before  
13 Thanksgiving because I promised them they wouldn't come in  
14 here. And I can't bring them in on Thanksgiving. And I  
15 wouldn't bring them in on Black Friday, whatever that is,  
16 cyber-cynetic something or another.

17 You know, they've done away with all of these -- I don't  
18 even get these new holidays. I think I'm just -- I'm just  
19 getting more remote from contemporary culture and practices,  
20 which you may have observed in some of my rulings.

21 But the fact of the matter is I don't like that big pause.

22 Now, I said I would listen to you, so do you have some  
23 views on that? Anybody?

24 **MR. HEMANN:** We're comfortable with the Court's  
25 initial inclination. And I think that the idea of having the

1 jury get instructed and have argument will cause the sort of  
2 internal deliberations over the long weekend that the Court  
3 has said -- correctly said is not --

4 **THE COURT:** You know, and there's a terrible  
5 tendency, even though they promise not to do it, if you give  
6 them five days to start to analyze the arguments themselves --  
7 which is what the government is saying -- and also perhaps  
8 even further making up their mind before they hear the views  
9 of their fellow jurors and, God forbid, talking to other  
10 members of the family around the Thanksgiving table, I think  
11 it's just not a great idea. So I'm going to exercise --  
12 absent a strong objection, that's what I'm going to do.

13 **MS. CAFFESE:** No objection.

14 **MR. GETZ:** And that's fine for Mr. Furminger.

15 **THE COURT:** All right. So now let's turn to the  
16 subject at hand, which is the -- the motion to exclude the  
17 text. And will you give me a moment to read it.

18 So I understand, is this a text that went to some person  
19 other than one of the witnesses?

20 **MR. VILLAZOR:** Your Honor, it's a text exchange  
21 between Mr. Furminger -- and at the time we didn't know who it  
22 was. Mr. Getz, had indicated it was another officer, Gillory.  
23 So it's a text message between --

24 **THE COURT:** Okay. Fine. I'm excluding it. I mean,  
25 it has nothing to do with this case other than, arguably, it

1 says that the sergeant got away with -- you know, when they  
2 were in the academy, or post academy they got away with  
3 things. And I don't even know what.

4 I think it meant something in the context of this case, if  
5 it involved these witnesses or these incidences, you know.  
6 If, in fact, there's a reference to look what we did in  
7 incident number one, two, three, and four, then, of course,  
8 it's an admission.

9 But it's not any of that, is it?

10 **MR. VILLAZOR:** Well, Your Honor --

11 **THE COURT:** It's just sort of a generalized, you  
12 know, guys will be guys, boys will be boys, cops will be cops  
13 sort of thing, you know. Isn't it?

14 **MR. VILLAZOR:** Your Honor, I would say -- so  
15 Mr. Furminger first notes that he's at golf with Ed Robles.

16 **THE COURT:** Uhm?

17 **MR. VILLAZOR:** He's at golf -- he's at golf with Ed  
18 Robles, felt the urge to text for some reason. So he's with a  
19 codefendant on a golf course, presumably, and --

20 **THE COURT:** He's not talking to the codefendant, is  
21 he?

22 **MR. VILLAZOR:** No, but he's with the codefendant. At  
23 least that's the inference. And then he says, "When the  
24 Mission was cool and the people we like there."

25 And then she -- the other person replies, "You sure miss



1 those days?"

2 And that's when Mr. Furminger says, "I miss what we used  
3 to get away with. Holy shit."

4 **THE COURT:** It's not coming in. Thank you very much.

5 **MR. VILLAZOR:** Thank you, Your Honor.

6 **THE COURT:** Are they all here?

7 **MS. CAFFESE:** Your Honor, we -- if I may, Your Honor.

8 **THE COURT:** Yes, of course.

9 **MS. CAFFESE:** One of the matters may be moot, as I  
10 understand from the government this morning.

11 **THE COURT:** Well, why don't you talk to the  
12 government and ask them right now whether that's moot.

13 **MR. VILLAZOR:** As to Mr. Santos, Officer Santos, it's  
14 moot. We won't be calling him.

15 **THE COURT:** Okay.

16 **MS. CAFFESE:** The other issue in my motion, Judge, is  
17 to exclude any testimony concerning the LinkedIn endorsement  
18 by Officer Robles to Mr. Hoang, who is the individual who's  
19 going to be testifying about the sale of the bicycle.

20 My point is the fact that Mr. Robles -- Officer Robles  
21 endorsed Mr. Hoang sometime later is irrelevant to any issue  
22 in this case. So --

23 **THE COURT:** I better hear what the evidence -- what's  
24 the proposed evidence?

25 **MR. HEMANN:** So Mr. -- I think it's Hoang is going to

1 testify that in 2009, shortly after the -- he won't testify to  
2 this part, but the relevance is that shortly after the Newark  
3 \$30,000 was taken, according to Mr. Vargas, within a couple of  
4 days after that Mr. Robles purchased a bicycle for him -- from  
5 him for \$3,700 in cash. That will be his testimony.

6 Five years elapse after that, and there is no contact  
7 between the two of them. Mr. Robles got indicted in February  
8 of 2014, and shortly thereafter, Mr. Hoang received a LinkedIn  
9 endorsement. And I'm not sure I know what that is, but  
10 Mr. Hoang certainly knows what that is. This falls in the  
11 category of me being remote as well.

12 **THE COURT:** Well, that's the difference between us.  
13 You're the proponent of the testimony. I just have to sit  
14 here and say -- I can tell you I don't understand it. But I  
15 don't want the prosecutor to get up and say, "I don't  
16 understand it."

17 **MR. HEMANN:** Well, I don't know what the actual  
18 mechanism of an actual endorsement is, but he reaches out  
19 through LinkedIn to vouch for Mr. Hoang some five years later,  
20 in the immediate aftermath of his indictments, having had no  
21 contact between the two of them for five years. We believe  
22 that that's consciousness of guilt.

23 **MS. CAFFESE:** Well, that makes an assumption, Judge.  
24 What happens is, if anyone is familiar with LinkedIn, I'm  
25 constantly getting emails to endorse. I could either press

1 delete, accept, a lot of other functions that could have been  
2 utilized at the time that this request to be joined or  
3 occurred.

4 So it assumes that somehow facts, quite frankly --

5 **THE COURT:** Well, what facts does it assume?

6 **MS. CAFFESE:** Well, it assumes that it was  
7 intentional. It assumes that Mr. --

8 **THE COURT:** Well, are you saying that -- no, no, no,  
9 no. I have to understand this.

10 Okay. Let's just take a scenario where five years ago he  
11 has a contact with the witness, purchases something from the  
12 witness, which I don't know is particularly in dispute, though  
13 it's a fact.

14 **MS. CAFFESE:** It is not. It's not in dispute.

15 **THE COURT:** Okay. Then he gets -- and no contact  
16 over five years. And then he gets an endorsement from the  
17 defendant.

18 **MR. HEMANN:** He -- Mr. Hoang believes that Mr. Robles  
19 invited him to be a LinkedIn friend just -- in January of  
20 2014. And then several months later, in April of 2014,  
21 Mr. Robles endorsed, without being solicited by Mr. Hoang,  
22 this -- this endorsement.

23 And, again, it's -- it is --

24 **THE COURT:** It's out. Next.

25 **MR. HEMANN:** Okay.

1           **MS. CAFFESE:** Thank you.

2           **THE COURT:** Okay. Oh, they're all here. Bring them  
3 all in.

4           (Jury enters at 9:04 a.m.)

5           **THE COURT:** Please be seated.

6           Okay. Let the record reflect that all jurors are present.  
7 The parties are present.

8           You may call your next witness.

9           **MR. HEMANN:** Thank you, Your Honor.  
10 The United States calls Tuan Hoang.

11          **THE CLERK:** Will the witness please come forward.

12          Good morning. Please remain standing. Raise your right  
13 hand.

14                   **TUAN HOANG, PLAINTIFF WITNESS, SWORN**

15          **THE WITNESS:** I do.

16          **THE CLERK:** Please be seated. Please state your full  
17 name. Spell your last name for the record.

18          **THE WITNESS:** My full name is Tuan Trong Hoang. My  
19 last name is spelled H-o-a-n-g. My first name is spelled  
20 T-u-a-n. My middle name is T-r-o-n-g.

21                   **DIRECT EXAMINATION**

22          **BY MR. HEMANN:**

23          **Q.** Good morning, Mr. Hoang. Thanks for coming in this  
24 morning.

25          Was there a point in time that you owned a Dogma Pinerello

1 bicycle?

2 **A.** Yes, I did.

3 **Q.** A red one?

4 **A.** Yes.

5 **Q.** I'm showing you what's been previously admitted in  
6 evidence as Exhibit 298. Does this appear to be the frame of  
7 the bicycle that you once owned?

8 **A.** Yes, it does.

9 **Q.** Did there come a time, Mr. Hoang, that you decided to sell  
10 this bicycle?

11 **A.** Yes, I did.

12 **Q.** When was that?

13 **A.** In the year of 2009.

14 **Q.** How did you go about making an effort to sell it?

15 **A.** I listed it on Craigslist.

16 **Q.** And why did you choose Craigslist?

17 **A.** Craigslist is an easy way to sell items to the public.

18 **Q.** Did you -- and how mechanically do you go about selling  
19 something on Craigslist?

20 **A.** Well, you -- I believe I created an account on Craigslist.  
21 And then I took pictures of the bicycle. I wrote a  
22 description of the bicycle. And I logged into Craigslist and  
23 listed the item for sale.

24 **Q.** Could you please -- there are a number of folders in front  
25 of you on the witness stand there and they all have little

1 numbers on them. And if you can, first, look at Exhibit 303.

2 Do you recognize that document, Mr. Hoang?

3 **A.** Yes, I do.

4 **Q.** Is that the -- your first Craigslist posting with regard  
5 to this bicycle?

6 **A.** It does appear to be, yes.

7 **Q.** There is a date up at the --

8 **MR. HEMANN:** Your Honor, the United States moves  
9 Exhibit 303 into evidence.

10 **THE COURT:** 303 admitted.

11 (Trial Exhibit 303 received in evidence.)

12 **BY MR. HEMANN:**

13 **Q.** There's a date --

14 **MR. HEMANN:** And if you could just blow up the top  
15 section, Ms. Lane.

16 (Document displayed.)

17 **BY MR. HEMANN:**

18 **Q.** There's a date up there at the top that says, "Record  
19 Created" and "Posted." What's the date for those two items?

20 **A.** Oh, May 3rd.

21 **Q.** There's a lengthy description of the bicycle down below  
22 that. There's, sort of, a long paragraph under the words "For  
23 Sale." Do you see that?

24 **A.** Yes, that's correct.

25 **Q.** And is that the text that you drafted to describe this

1 bike?

2 **A.** Yes.

3 **Q.** After you posted this entry on the 3rd of May, did you  
4 receive an inquiry from a person by the name of Ed Robles?

5 **A.** Yes, I did.

6 **Q.** Okay. Logistically, if you could take that, shut it, and  
7 move it to the side, we'll collect them later on.

8 And turn to Exhibit 310. And the way these printed out,  
9 Mr. Hoang, they are not necessarily in chronological order.

10 But my question for you is whether this document contains  
11 a series of emails between you and Mr. Robles regarding the  
12 bike?

13 **A.** It does.

14 **MR. HEMANN:** Your Honor, the United States moves  
15 Exhibit 310 into evidence.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 310 received in evidence.)

18 (Document displayed.)

19 **BY MR. HEMANN:**

20 **Q.** If you could look, Mr. Hoang, at the top -- the email on  
21 the first page at the top.

22 **MR. HEMANN:** If you could blow that up, Ms. Lane,  
23 please.

24 **BY MR. HEMANN:**

25 **Q.** There's an email here from E. Robles, dated Thursday,

1 May 7, 2009. Do you see that?

2 **A.** Yes, I do.

3 **Q.** And the email -- and this isn't in your words. I'll go  
4 ahead and read it.

5 "Hello, I have a Macintosh MC300 in showroom  
6 condition if you were up for a trade. I bought it  
7 new from the House of Music in San Francisco. I  
8 could email you pics if you're interested. I also  
9 have a McIntosh 7008 and a C712 and a pair of Tannoy  
10 Saturn S10s. The system sounds incredible. Regards,  
11 Ed Robles."

12 Do you see that?

13 **A.** Yes, I do.

14 **Q.** And is that the first inquiry that you received from  
15 Mr. Robles regarding the bicycle?

16 **A.** I believe it is.

17 **Q.** Mr. Hoang, this proposes some -- looks like stereo  
18 equipment rather than cash. Is that something that you had  
19 invited when you first posted the initial listing for this  
20 bicycle?

21 **A.** Yes, I did. I considered a trade as well as a sale.

22 **MR. HEMANN:** Ms. Lane, if you could go back to the  
23 previous exhibit, Exhibit 303.

24 (Document displayed.)

25



1 **BY MR. HEMANN:**

2 **Q.** If you could look up on the screen right there to your  
3 right, there's some text blown up.

4 Is there a suggestion in here in the text that you  
5 drafted --

6 **A.** I hate to interrupt, but I have nothing on my screen.

7 **Q.** Oh, that's no good. Go back to the document then, the  
8 hard copy document just to your right, Exhibit 303.

9 And in that text there, do you propose a trade rather  
10 than --

11 **THE COURT:** Well, wait, wait, wait.

12 **MR. HEMANN:** Oh, sorry.

13 **THE COURT:** Time out for technological adjustments.

14 (Pause)

15 **THE COURT:** Thank you. Would you start your question  
16 again, please.

17 **MR. HEMANN:** Thank you, Your Honor.

18 **BY MR. HEMANN:**

19 **Q.** Do you see the text up on the screen there now?

20 **A.** I do.

21 **Q.** Starting "For Sale"?

22 **A.** Yes.

23 **Q.** Do you see there your suggestion of what the terms of the  
24 exchange might be?

25 **A.** Yes, I do.

1 Q. Could you read, Mr. Hoang, the two sentences starting with  
2 the words "I am asking."

3 Do you see it on the -- starts --

4 A. Oh, yes, I'm sorry.

5 Q. Right there. Thank you.

6 A. (As read:)

7 "I'm asking \$4,500 or best offer. I would also be  
8 open to trades for newer McIntosh audio equipment.

9 If you've got a Rolex Deep Sea, I will give you bike  
10 plus 3,000 cash for your watch."

11 Q. Great. Thank you.

12 MR. HEMANN: So if you can take this down and put up  
13 310 again, Ms. Lane.

14 (Document displayed.)

15 BY MR. HEMANN:

16 Q. So in 310, is Mr. Robles offering you, this email, some  
17 McIntosh stereo equipment that you had suggested might be  
18 acceptable?

19 A. Yes.

20 Q. Now, did you initially accept this offer as -- as proposed  
21 by Mr. Robles?

22 A. Uhm, I had considered it. I had not formally accepted it.

23 Q. After the initial Craigslist posting on May the 3rd, 2009,  
24 did you post the bicycle on subsequent occasions?

25 A. I believe I did.

1 Q. Could you please look at Exhibit 304 in front of you in  
2 one of the -- 304 and 305 in the envelopes or in the folders  
3 in front of you.

4 And first 304, is this a subsequent posting on Craigslist  
5 for the same bicycle?

6 A. It looks like it, because it's dated a little bit later.

7 THE COURT: 304 admitted.

8 (Trial Exhibit 304 received in evidence.)

9 (Document displayed.)

10 BY MR. HEMANN:

11 Q. What's the date on this, please?

12 A. May 11, 2009.

13 Q. And on May 11, 2009, what were you asking for the bike?

14 A. I believe it's the same price.

15 Q. 4500?

16 A. 4500, yes.

17 Q. If you could look at 305.

18 A. Yes, I see it.

19 Q. Is this a third posting for the same bike?

20 A. Yes, dated May 20th.

21 MR. HEMANN: Your Honor, the United States moves 305  
22 into evidence.

23 THE COURT: Admitted.

24 (Trial Exhibit 305 received in evidence.)

25 (Document displayed.)

1 **BY MR. HEMANN:**

2 **Q.** Was the price that you were asking for the bike on May 20,  
3 2009, different?

4 **A.** Yes. Looks like I had dropped the price on the bike.

5 **Q.** From what to what?

6 **A.** From \$4,500 to \$4,300.

7 **Q.** And were you still at this point open to the McIntosh  
8 stereo equipment?

9 **A.** Yes, I am.

10 **Q.** Okay.

11 **A.** I was.

12 **Q.** If you could put 304 and 305 aside, please, on your  
13 folders there, Mr. Hoang. Put them aside there.

14 And if you could look at Exhibit 301.

15 **A.** Okay.

16 **Q.** Do you recognize this as an email exchange between you and  
17 Mr. Robles regarding the bike?

18 **A.** Yes.

19 **MR. HEMANN:** Your Honor, the United States moves  
20 Exhibit 301 into evidence.

21 **THE COURT:** Admitted.

22 (Trial Exhibit 301 received in evidence.)

23 (Document displayed.)

24 **BY MR. HEMANN:**

25 **Q.** As these typically do, Mr. Hoang, the earliest one is at

1 the end of the emails, the pages there. And if you could look  
2 at the email dated May the 21st, 2009, at 6:01 p.m.

3 **A.** Okay.

4 **Q.** See at the very bottom.

5 **MR. HEMANN:** If you can expand that text at the  
6 bottom, starting with on "May" -- next page, please. Starting  
7 with on "May 21st, 2009."

8 **THE WITNESS:** Would you like me to read that?

9 **MR. HEMANN:** I'm sorry, Ms. Lane, lower down. The  
10 first one.

11 (Document displayed.)

12 **BY MR. HEMANN:**

13 **Q.** Yes, if you could read the text from the email from  
14 Mr. Robles on May 21st, 2009, not the Craigslist advisory.

15 **A.** Okay. "Ed, what are you thinking" --

16 **Q.** I'm sorry, the one below that, at 6:01 p.m.

17 **A.** Oh.

18 "Come on, bro, let's do a trade for some Mac stuff.

19 Ed Robles."

20 **Q.** Did you respond to this email at 6:01 p.m. -- or the  
21 6:01 p.m. email?

22 **A.** It appears I did.

23 **Q.** And what was your response to Mr. Robles?

24 **A.** (As read:)

25 "Ed, what are you thinking in terms of trade-in value

1 for your gear? Thanks again for your persistence.

2 If it's persuasive, I may consider it."

3 **Q.** Mr. Robles responded to you at 6:30 p.m. the same day, and  
4 you have to, kind of, page back and forth in the emails here.

5 **A.** Okay.

6 **Q.** Do you see at the very bottom of the first page an email  
7 from Mr. Robles to you the same day at 6:30 p.m.?

8 **A.** Yes, I do.

9 **Q.** And the text for that is on the top of the next page.

10 **MR. HEMANN:** And, Ms. Lane, if you could blow that  
11 up, and I could read that.

12 **BY MR. HEMANN:**

13 **Q.** (As read:)

14 "Okay, how about the entire Mac system. The MC300,  
15 C712, and the MCD-7008 with the cables. Good stuff,  
16 straight across."

17 Then he goes on to describe the details regarding these  
18 items; is that correct?

19 **A.** Yes.

20 **Q.** And then at the end -- close to the end he says:

21 "That's a great deal. I'll probably ride that bike  
22 for a week and give it up. You'll be enjoying this  
23 system for life. There, it's on the table. Let's do  
24 it. Ed."

25 Did I read that correctly, Mr. Hoang?

1     **A.** Yes, you did.

2     **Q.** And how did you respond to that offer for stereo equipment  
3     from Mr. Robles?

4     **A.** Would you like me to read that?

5     **Q.** Just -- why don't you describe what your response is  
6     rather than reading the whole thing.

7     **A.** I considered every component listed in his offer for  
8     trade. And I looked at a website that has for sale/trade  
9     high-end audio equipment, Audio Guide. And I looked at recent  
10    sales or recent listings to get a feel for the market value  
11    for the items offered for trade. And I responded to  
12    Mr. Robles in that email.

13    **Q.** And what was the substance of your response?

14    **A.** It looked like, by adding the current market price at that  
15    time for the equipment, it totaled less than what I was asking  
16    for the bike.

17    **Q.** And so did you accept or reject Mr. Robles' offer?

18    **A.** It looks like I declined that offer.

19    **Q.** And up until that point in time, had Mr. Robles offered  
20    you any cash for the bicycle?

21    **A.** It doesn't appear so.

22    **Q.** After this email exchange with Mr. Robles on the 21st of  
23    May, 2009, did you post another listing for the bicycle?

24    **A.** Uhm, if I haven't sold it, then I probably did.

25    **Q.** If you could please look at Exhibit 306, in front of you.

1     **A.**   Pardon me.

2     **Q.**   Sorry.

3     **A.**   306.

4     **Q.**   Is that, Mr. Hoang, a final posting or another posting for  
5     the bike dated May the 31st, 2009?

6     **A.**   If this is my last posting --

7     **Q.**   Well, is it another posting that you did --

8     **A.**   Yes.

9     **Q.**   -- for the bike?

10    **A.**   Yes.

11                 **THE COURT:**   Admitted.

12                 (Trial Exhibit 306 received in evidence.)

13                 (Document displayed.)

14    **BY MR. HEMANN:**

15    **Q.**   And what was the date and time of that posting?

16    **A.**   May 31st, 2009.   9:57 Pacific Central -- or Pacific  
17    Daylight.

18    **Q.**   And had you dropped the price of the bike again?

19    **A.**   Yes, I did.

20    **Q.**   What did you drop it to?

21    **A.**   I dropped it from 4300 to \$4,200.

22    **Q.**   Did Mr. Robles respond to this posting?

23    **A.**   I believe he did.

24    **Q.**   Could you please look at -- 310 is in evidence.

25                 **MR. HEMANN:**   And, Ms. Lane, if you could put up -- go



1 to the second page of 310, and blow up the email at the  
2 bottom.

3 (Document displayed.)

4 **BY MR. HEMANN:**

5 **Q.** Do you see an e-mail there from Mr. Robles at 4:53 p.m. on  
6 Sunday, May 31st, 2009?

7 **A.** I don't have a date of -- 4:53? I have 4:43.

8 **Q.** Sorry, 4:43. Thank you. May 31st at 4:43 p.m.?

9 **A.** Yes.

10 **Q.** And Mr. Robles says:

11 "Will 3,000 cash do it? Ed."

12 Did I read that correctly?

13 **A.** That's correct.

14 **Q.** Did you respond to Mr. Robles?

15 **A.** Yes, I did.

16 **Q.** And if you could look up at the top, there's an email  
17 dated May 31st, 2009, at 6:36 p.m. Do you see that?

18 **A.** Yes, I do.

19 **Q.** Can you please read the text of that email for the jury.

20 **A.** (As read:)

21 "Hi, Ed. I want to thank you for your cash offer and  
22 persistence, but at this time I must decline. The  
23 lowest I can go is 4,000 cash as I have over \$7,000  
24 into this bike. It's obvious you have excellent  
25 taste in audio gear and bicycles. Tuan Hoang."

1 **Q.** There's an email response from Mr. Robles Monday,  
2 June 1st, at 9:51 p.m. And I'll read it.

3 "Hi Tuan. Thought I'd give it one last shot. I can  
4 offer 3500 cash for the Dogma. If you agree, I could  
5 pick up tomorrow. Thanks, Ed."

6 Did I read that correctly?

7 **A.** Yes, you did.

8 **Q.** So after you received that email from Mr. Robles, are you  
9 now negotiating with him in cash rather than in stereo  
10 equipment?

11 **A.** That's correct.

12 **Q.** And did you at some point in time speak with Mr. Robles by  
13 telephone?

14 **A.** I'm sure I did.

15 **Q.** Could you please look at Exhibit 311.

16 **MR. HEMANN:** And, Your Honor, we'll be putting this  
17 in through the FBI agent, but we can have him -- it's a phone  
18 record.

19 **THE COURT:** Well, it can come in subject to a motion  
20 to strike.

21 (Trial Exhibit 311 received in evidence.)

22 **BY MR. HEMANN:**

23 **Q.** Before you is a series of telephone records, Exhibit 311.  
24 Do you see that?

25 **A.** Yes, I do.

1 Q. Do you recognize one of the phone numbers on that list?

2 A. Yes.

3 Q. And what phone number do you recognize?

4 A. Area code (925)336-6709.

5 Q. And what phone number is that?

6 A. I believe that is Mr. Robles.

7 Q. And do you recognize another telephone number on that  
8 list?

9 A. Yes. I believe that the other phone number is my cell  
10 phone number.

11 Q. And that's the 786-4191 number?

12 A. That's correct.

13 MR. HEMANN: Your Honor, subject to -- I think it's a  
14 stipulation, Exhibit 311 is offered.

15 THE COURT: Admitted.

16 (Trial Exhibit 311 received in evidence.)

17 MR. HEMANN: If you could just put that up, Ms. Lane,  
18 and blow up the times just -- the dates and times just to the  
19 left, and duration.

20 (Document displayed.)

21 BY MR. HEMANN:

22 Q. Did you, Mr. Hoang, have a series of telephone  
23 conversations with Mr. Robles on June the 2nd, 2009, regarding  
24 the bike?

25 A. Yes, I did.

1 Q. At some point in time did you -- did Mr. Robles make an  
2 offer for the bike that you accepted?

3 A. It very likely could have happened, yes.

4 Q. Well, do you remember you and Mr. Robles coming to an  
5 agreement on the price of a bike?

6 A. Yes.

7 Q. And how much was that agreement for?

8 A. I believe it was for \$3,700.

9 Q. And how was that to be paid?

10 A. In cash.

11 Q. Going back to Exhibit 310 --

12 (Document displayed.)

13 MR. HEMANN: If you could blow up that email in  
14 the -- sort of in the center, dated June 2nd, 2009.

15 BY MR. HEMANN:

16 Q. By this email, Mr. Hoang, did you send Mr. Robles details  
17 as to how to get to your house to effect the transaction?

18 A. Yes.

19 Q. And there's some redacted material there. Does the  
20 redacted material have to do with the address and directions  
21 to your house?

22 A. Okay. Yes.

23 Q. Did you meet with Mr. Robles around June the 2nd, 2009, in  
24 person?

25 A. Yes.

1 Q. Where did you meet?

2 A. I met at my house.

3 Q. And what was -- where'd you meet at your house?

4 A. In front of my house, in the driveway.

5 Q. And did you exchange the bike for money?

6 A. Yes.

7 Q. And did Mr. Robles give you cash?

8 A. Yes.

9 Q. How much did he give you?

10 A. \$3,700.

11 Q. Did you prepare any document to give to Mr. Robles along  
12 with the bicycle?

13 A. Yes, I did.

14 Q. If you look at Exhibit 307, which is in front of you.

15 A. Okay.

16 Q. What is that document?

17 A. It is a bill of sale.

18 Q. Did you prepare that?

19 A. Yes, I did.

20 THE COURT: Admitted.

21 (Trial Exhibit 307 received in evidence.)

22 MR. HEMANN: Thank you, Your Honor.

23 (Document displayed.)

24 BY MR. HEMANN:

25 Q. Did you sign it?

1 **A.** Yes, I did.

2 **Q.** Did you give it to Mr. Robles to sign?

3 **A.** Yes, I did.

4 **Q.** Did he sign it?

5 **A.** Yes, he did.

6 **Q.** And did you provide a copy of this document to Mr. Robles?

7 **A.** Yes, I did.

8 **Q.** Did you save a copy for yourself?

9 **A.** Yes, I did.

10 **Q.** And did you give a copy of that document to the FBI?

11 **A.** Yes, I did.

12 **Q.** And is that the document that you're looking at right now?

13 **A.** Yes, I did -- or yes, it is.

14 **MR. HEMANN:** I thought the original was in the folder  
15 there. Let me just --

16 **BY MR. HEMANN:**

17 **Q.** Is this the original of Exhibit 307, Mr. Hoang?

18 **A.** Yes, it is.

19 **MR. HEMANN:** Thank you, Your Honor.

20 **THE COURT:** Cross?

21 **MR. PASSAGLIA:** Nothing on behalf of Mr. Furminger.

22 **THE COURT:** Ms. Caffese.

23 **MS. CAFFESE:** Yes. Thank you, Your Honor.

24

25

**CROSS EXAMINATION**

**BY MS. CAFFESE:**

**Q.** Good morning, sir. My name is Teresa Caffese. And I have some questions for you, if I may.

**A.** Yes.

**MS. CAFFESE:** I have -- and I've marked this as Exhibit 364.

(Trial Exhibit 364 marked for identification.)

**MS. CAFFESE:** It's a series of email exchanges between the parties.

**MR. HEMANN:** No objection to these, Your Honor.

**MS. CAFFESE:** Thank you.

**THE COURT:** 364 admitted.

(Trial Exhibit 364 received in evidence.)

**BY MS. CAFFESE:**

**Q.** Sir, I would like to just ask you some questions concerning the chronology of the emails, if I may.

Now, my understanding is that you initially posted a Craigs- -- posted the bicycle on Craigslist on May 1st, I believe?

**A.** Okay.

**Q.** Beginning of May; is that right?

**A.** I believe so.

**Q.** All right. And Officer Robles sent you an email on May 7th of 2009; is that right?

1     **A.**   Should I look at the evidence?

2     **Q.**   Yeah.  Let me give you, if I may, what I'm referring to.  
3     This is Exhibit 364.

4           And I'm going to be referring to the email exchanges  
5     between you and Officer Robles, okay?

6     **A.**   Okay.

7     **Q.**   You've testified to these.  I'm just going to take it in a  
8     chronological fashion that might make, hopefully, some sense.

9           So on May 7th, Officer Robles -- and that should be on  
10    page 3 of your exhibit there?

11    **A.**   Okay.

12    **Q.**   He sends you an email to your ad saying that he has some  
13    stereo equipment; is that right?

14    **A.**   Yes.

15    **Q.**   And he describes it in showroom condition; is that right?

16    **A.**   Yes.

17    **Q.**   And he says it's new.  And he describes it from the House  
18    of Music in San Francisco; right?

19    **A.**   Yes.

20    **Q.**   He says, quote, "The system sounds incredible!  Regards,  
21    Ed Robles."  Is that right?

22    **A.**   Yes.

23    **Q.**   All right.  Now, some time goes by and then you respond to  
24    him on May 21st of 2009; is that right?

25    **A.**   Yes.



1 Q. And you're asking him what he's thinking in terms of the  
2 trade?

3 A. Yes.

4 Q. Is that right?

5 And you're thanking him for his persistence because,  
6 clearly, the two of you are -- or he is trying to barter,  
7 trade what he believes to be very expensive high-end stereo  
8 equipment for your bicycle; is that right?

9 A. That is correct, yes.

10 Q. Now, you basically at that time don't respond; is that  
11 right?

12 You don't immediately respond -- you don't immediately  
13 accept his offer to exchange his stereo equipment --

14 A. That's right --

15 Q. -- for a bicycle?

16 A. -- I do not immediately accept his offer.

17 Q. Now, you ask him on the 21st what he's thinking of in  
18 terms of a trade; is that right?

19 A. Yes, that's correct.

20 Q. And you're saying, "If it's persuasive, I may consider  
21 it"?

22 A. Yes.

23 Q. And, actually, before this you're even thinking about --  
24 or you reach out and ask whether or not somebody has a Rolex  
25 watch to trade with?

1     **A.**   Yes.

2     **Q.**   Is that right?

3     **A.**   Yes.

4     **Q.**   So you're kind of interested in bartering, potentially,  
5     some items for your bicycle; is that right?

6     **A.**   That is correct, yes.

7     **Q.**   Cash is not the only thing that you would necessarily have  
8     been interested in if the price were right; is that right?

9     **A.**   That is correct.

10    **Q.**   Or if it were an item that you thought was the equivalent,  
11    perhaps, of your bicycle?

12    **A.**   Yes.  If it's more, such as the watch, I would add cash to  
13    the trade on my end.

14    **Q.**   Now, on May 21st, Officer Robles asked you, "Come on, bro,  
15    let's do a trade for some Mac stuff, Ed Robles"; is that  
16    right?

17           Do you see, that's page 2?

18    **A.**   Yes, I do, yes, at the bottom.

19    **Q.**   And on May 21st, again, he -- he describes how you're  
20    going to be -- my next question, same page, on page 2 --

21    **A.**   Okay.

22    **Q.**   Okay.  And, actually, on page 1 is where the email to you  
23    begins May -- on page 1, you see?

24    **A.**   Yes, I see that.  Thank you.

25    **Q.**   May 21st, 6:30 p.m.?

1     **A.**   Yes.

2     **Q.**   He describes to you how you're going to have this for  
3     life, the stereo.  And you're going to be able to -- to enjoy  
4     this incredible stereo equipment for life.  And he says he's  
5     even going to throw in some additional components with the  
6     deal.  Is that right?

7     **A.**   Yes, that's correct.

8     **Q.**   And he says, quote, "I'll probably ride that bike for a  
9     week and give it up."  Is that right?

10    **A.**   Yes.

11    **Q.**   So there he's essentially telling you, hey, you're going  
12    to have this great expensive stereo equipment for life and I'm  
13    going to get the bike and I'm going to get rid of it,  
14    essentially.

15           Is that what your interpretation of this exchange was,  
16    sir?

17           **MR. HEMANN:**  Objection, Your Honor.  Calls for  
18    speculation.

19           **THE COURT:**  Well, I think Counsel is asking was that  
20    what his understanding was.  I mean, it is speculative, but  
21    maybe he said something.  You have to lay a foundation for it,  
22    but I'll allow the question.

23           Do you know what -- is that your understanding of what the  
24    defendant was going to do?

25           **THE WITNESS:**  I --

1 **BY MS. CAFFESE:**

2 **Q.** If you -- when I read you that and when you read that  
3 email from Ed Robles, was --

4 **A.** What I read, "and give up," I mean, it sounds like and  
5 give up riding a bike, not necessarily giving up the bicycle.

6 **Q.** Right.

7 **A.** Yeah.

8 **Q.** But, essentially, he's trying to persuade you to exchange  
9 this bike. He's saying, I'm not going to keep this bike for  
10 very long and you're going to have this great stereo equipment  
11 for life. True enough?

12 **A.** Yes, yeah.

13 **Q.** All right. Now, time goes by, obviously, is that right?  
14 And at some point you agree -- did you want to look at  
15 that some more, sir?

16 **A.** Yes.

17 **Q.** So, essentially, you're communicating with Officer Robles  
18 long before you actually sell him the bike on June 2nd; is  
19 that right?

20 **A.** That's correct.

21 **Q.** Okay. And you thought, actually, the bike was worth much  
22 more than you had paid for it; is that right?

23 **A.** Not much more.

24 **Q.** Excuse me. Let me rephrase it.

25 You believed that the bicycle was worth much more than you

1 eventually sold it for; is that right?

2 **A.** Uhm, I'm not following.

3 **Q.** You reduced the price?

4 **A.** Yes. I had to. It didn't sell.

5 **Q.** And you reduced it to \$3,700; is that right?

6 **A.** That's right.

7 **Q.** And, initially, how much were you asking for it?

8 **A.** 4500.

9 **MS. CAFFESE:** Okay. I don't have any further  
10 questions. Thank you, sir.

11 **THE COURT:** Thank you.

12 **MR. HEMANN:** Very briefly, Your Honor.

13 Put up Exhibit 310. Blow up the very, very first email.

14 (Document displayed.)

15 **MR. HEMANN:** I'm sorry, actual first, not first  
16 first. There we go.

17 (Document displayed.)

18 **REDIRECT EXAMINATION**

19 **BY MR. HEMANN:**

20 **Q.** The first email that Ms. Caffese asked you about was this,  
21 and it refers to the McIntosh being in showroom condition and  
22 says, "I bought it new from the House of Music in  
23 San Francisco."

24 Do you see that?

25 **A.** Yes, I do.

1 Q. Do you know when Mr. Robles bought this new from the House  
2 of Music in San Francisco?

3 A. No, I don't. Not exactly.

4 Q. Do you know generally?

5 MS. CAFFESE: Well, objection. That calls for  
6 speculation.

7 THE WITNESS: I don't know.

8 MR. HEMANN: Withdrawn.

9 No further questions, Your Honor.

10 MS. CAFFESE: No further questions.

11 THE COURT: Okay. Thank you very much. You're  
12 excused.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. VILLAZOR: The government calls Crystal Ponzer.

16 THE CLERK: Will the witness please come forward.  
17 Take the witness stand. Please remain standing. Raise your  
18 right hand.

19 CHRYSTAL PONZER, PLAINTIFF WITNESS, SWORN

20 THE WITNESS: Yes.

21 THE CLERK: Please be seated.

22 Please state your full name. Spell your last name for the  
23 record.

24 THE WITNESS: Crystal Ponzer, P-o-n-z-e-r.  
25

**DIRECT EXAMINATION**

**BY MR. VILLAZOR:**

**Q.** Good morning, Ms. Ponzer.

**A.** Good morning.

**Q.** I'm going to hand you an incident report binder. It's already been admitted in evidence. If you could turn to tab 10.

**MR. VILLAZOR:** Ms. Lane, if you could put on Exhibit 274, which has already been admitted into evidence.

(Photograph displayed.)

**BY MR. VILLAZOR:**

**Q.** Are you with me, Ms. Ponzer?

**A.** Yes.

**Q.** Do you recognize that place?

**A.** Yes. That's the storage locker that me and my ex were residing in.

**Q.** I'm sorry, could you -- do you want a glass of water?

**A.** No, I'm okay.

**Q.** Okay. I'll ask it again. If you would speak slowly into the microphone.

Do you recognize this picture, Government Exhibit 274?

**A.** Yes, I do.

**Q.** What is it?

**A.** It's a storage locker where me and my ex were residing in.

And also where I was arrested.

1 Q. Okay. Let me take that slowly.

2 Who is your ex?

3 A. Burgess Crosby.

4 Q. Burgess Crosby?

5 A. Crosby, yes.

6 Q. You said you were arrested?

7 A. Yes.

8 Q. Were you arrested with Mr. Crosby?

9 A. Yes, I was.

10 Q. Do you remember when you were arrested?

11 A. Uhm, it was end of November maybe about four years ago,  
12 probably.

13 Q. If I showed you your -- do you remember, when you were  
14 arrested was there a report written?

15 A. Yes, there was.

16 Q. If I showed you that report, would that help remember the  
17 exact date you were arrested?

18 A. Probably.

19 Q. Okay. If you could turn a few pages after 274, you'll see  
20 a tab, a blank tab.

21 Do you see that there's an arrest report there?

22 A. Yes.

23 Q. Okay. And if you turn to page 3 of that arrest report, it  
24 says "3 of 7" on the bottom right?

25 A. Uh-huh.



1 Q. Do you see your name?

2 A. Yes, I do.

3 Q. Okay. Now, if you turn to the first page, do you see --  
4 at the top left do you see there's a date there?

5 A. Yes, it's the 19th.

6 Q. Okay. Does that -- does that refresh your recollection?  
7 Does that refresh your memory as to when you were arrested?

8 A. Yeah, it does. I mean, I remember it was around  
9 Thanksgiving, so -- but it's like, what, a week before  
10 Thanksgiving or something, so.

11 Q. What were you arrested for outside of this storage locker  
12 unit?

13 A. Uhm, because they found methamphetamine and heroin inside  
14 of the locker, the storage locker.

15 Q. When you say "they," who are you referring to?

16 A. The police officers.

17 Q. From San Francisco Police Department?

18 A. Yes, Mission Station.

19 Q. All right. Would you remember any of the police officers  
20 that placed you under arrest?

21 A. I'm sure I would.

22 Q. Do you see them in the courtroom today?

23 A. Yes, I do.

24 Q. All right. Can you point out any of them, if you  
25 recognize them?

1     **A.** The gentleman sitting right there in the middle  
2     (indicating).

3     **Q.** Is that the gentleman seated to the right of the man with  
4     the beard?

5     **A.** The left -- yeah, you're right, I guess. Excuse me.

6             And I think either -- the bald man right there, I think.  
7     I don't know. I wasn't really -- because I was sitting in the  
8     car the whole time.

9     **Q.** You were sitting in the car the whole time?

10            **MS. CAFFESE:** The record should reflect that the  
11     witness has identified Mr. Passaglia.

12     **BY MR. VILLAZOR:**

13     **Q.** Now, Ms. Ponzer --

14            **THE COURT:** So noted.

15            **MS. CAFFESE:** Thank you, Your Honor.

16            **MR. VILLAZOR:** Your Honor, could the record reflect  
17     that the witness has identified Mr. Furminger as well?

18            **THE COURT:** So noted.

19     **BY MR. VILLAZOR:**

20     **Q.** Ms. Ponzer, can you describe what you were doing prior to  
21     arriving at this storage locker that morning?

22     **A.** We had left Burgess's son's house.

23     **Q.** What were you and Burgess doing at Burgess's son's house?

24     **A.** I just was in the car the whole time. He had went to pick  
25     up some mail and insurance money that he had -- that Burgess

1 had for him, so.

2 **Q.** Did you say insurance money?

3 **A.** It wasn't insurance. It was money. You know, I think it  
4 was for his car insurance or something for -- because the car  
5 we'd got from Burgess -- well, Burgess had bought it from  
6 Burgess Jr., so.

7 **Q.** Burgess had bought it from Burgess Jr.?

8 **A.** His son, yes.

9 **Q.** Burgess Jr. is Burgess Crosby's son?

10 **A.** Yes, he is.

11 **Q.** Where was Burgess Crosby Jr.'s son living [sic]?

12 **A.** On Peoria Street. 63 Peoria, in Daly City.

13 **Q.** What were you doing prior to going to the house in Daly  
14 City?

15 **A.** Uhm, I think we went -- we were at breakfast. Like, we  
16 went to breakfast like we normally do and -- I don't know.  
17 Just the beginning of our day, pretty sure.

18 **Q.** After the Daly City house, where did you and Burgess  
19 Crosby go?

20 **A.** We went to the storage locker, because I needed to get  
21 some clothes and because it was sort of on the way, I think.  
22 Yeah. I don't know. I mean, it was a long time ago, so.

23 **Q.** I understand.

24 Were you also there to store things in the storage locker?

25 **A.** Uhm, yeah, we were.

1 Q. What were you there to store?

2 A. Well, Burgess was there to store the drugs, because it was  
3 a lot to carry around.

4 Q. Did Burgess Crosby have money on him?

5 A. Yes, he did.

6 Q. Did he store it in any particular way?

7 A. He had two wallets.

8 Q. Two wallets?

9 A. Yes. He had one wallet that was a business wallet and  
10 then another wallet that was his personal wallet. And I  
11 think -- I'm not positive, but I think that possibly even --  
12 because he had a lot of money. I mean, he was selling a lot  
13 of drugs.

14 So the money that he had gotten from his son, he could  
15 have even put it, I think, somewhere in the car, possibly. I  
16 don't remember.

17 Q. All right. You said he had two wallets?

18 A. Yes.

19 Q. And one was a personal wallet?

20 A. Yes.

21 Q. And one was a business wallet?

22 A. Yes.

23 Q. Okay. When you say "business wallet," what business are  
24 you talking about?

25 A. His drug dealing.

1 Q. Okay. When you arrived at the storage unit, what  
2 happened?

3 A. Uhm, we pulled up. Burgess got out of the car and he went  
4 to the trunk. He got the dope. He went and he entered the  
5 storage locker, the outer door. And then when he came out,  
6 the officers, you know, arrest him and stopped him.

7 One of them got me out of the car and just proceeded to  
8 search us and just do what they do.

9 Q. Do what they do.

10 Now, if you look at the picture here, you'll see several  
11 green doors.

12 A. Yeah.

13 Q. Do you see the picture on the screen to your right?

14 A. Yeah, that's the outside of the storage locker.

15 Q. Are one of those doors the door that you saw Burgess  
16 Crosby go in?

17 A. Yes.

18 Q. Did you guys have a storage unit inside of this -- inside  
19 of this storage unit?

20 A. Yes, we did.

21 Q. And you were -- you remained in the car?

22 A. Yes.

23 Q. Were you then placed under arrest?

24 A. Yes.

25 Q. What happened after that?

1 **A.** Uhm, I was taken down to the station. Burgess told me  
2 that --

3 **Q.** Well, let's not go into what Burgess told you.  
4 But you were taken down to the police station?

5 **A.** Yes.

6 **Q.** Were you taken down in a marked police car with the  
7 lights?

8 **A.** I think so. I don't remember.

9 **MR. VILLAZOR:** Just a moment.

10 No further questions, Your Honor.

11 **THE COURT:** Mr. Getz.

12 **CROSS EXAMINATION**

13 **BY MR. GETZ:**

14 **Q.** Good morning.

15 **A.** Good morning.

16 **Q.** Going back to the time frame of what you were testifying  
17 about a few moments ago, Thanksgiving week, 2009, in that time  
18 frame were you struggling with drug dependency?

19 **A.** Of course. Why else would I be with a man that was  
20 considerably older than I was, you know.

21 **Q.** He was the one who was providing you with heroin; was he  
22 not?

23 **A.** Yes.

24 **Q.** Were you also involved at all in selling it to support  
25 your dependency?

1     **A.** Uhm, not really. I mean, I would help Burgess a little  
2     bit, but it wasn't -- I mean, not really.

3     **Q.** You were helping him with his sales activities though?

4     **A.** I guess, yeah, I mean.

5     **Q.** You had been convicted before this arrest at 850 Bryant  
6     Street; correct?

7     **A.** Yeah, for a misdemeanor possession.

8     **Q.** So I want to talk about that case just for a moment,  
9     because I'm going to ask you how it pertains to the  
10    Thanksgiving week episode.

11         And in that earlier case you were represented by the  
12    public defender. Do you remember that?

13    **A.** Yes.

14    **Q.** And the public defender who represented you helped you  
15    make a deal to resolve that case before it went to trial;  
16    correct?

17    **A.** Yeah, I was placed on misdemeanor probation.

18    **Q.** On the day that you were placed on misdemeanor probation,  
19    you pled guilty in front of a judge --

20    **A.** Misdemeanor for drug possession, yes.

21    **Q.** Okay. You were on the first floor of 850 Bryant Street in  
22    one of those felony courts; correct?

23    **A.** Yes, of course. And it got drooped to a misdemeanor.

24    **Q.** Right. And on that day when you made that deal, you pled  
25    guilty, you were standing there in an open court, much as I'm

1 standing here at this lectern, and you pled guilty. You  
2 looked at the judge and you pled guilty. Do you remember  
3 that?

4 **MR. VILLAZOR:** Your Honor, objection. Relevance.

5 **THE COURT:** Overruled.

6 **BY MR. GETZ:**

7 **Q.** Do you remember doing that?

8 **A.** Yes.

9 **Q.** Do you remember that when you pled guilty that morning the  
10 Judge told you that, as part of the deal, you would be subject  
11 to warrantless search; meaning that your person, your place of  
12 residence, your automobile, wherever you are could be searched  
13 at any time of the day or night, with or without a warrant, by  
14 any peace or probation officer? Do you remember the judge  
15 told you that?

16 **A.** Yes, I do.

17 **Q.** And do you also remember that when the judge told you  
18 that, the Judge asked you this question: "Ms. Ponzer, do you  
19 accept those conditions of probation?" And you said, "Yes."  
20 Do you remember that?

21 **A.** Of course.

22 **Q.** All right. So you knew, when the police came out to see  
23 you at the storage locker, you didn't have any protection  
24 against warrantless search because you had agreed to be  
25 subject to that. Do you remember that?



1     **A.**   Okay.  Well, but -- I mean, can you get to the point?

2     **Q.**   My point is, do you remember realizing --

3     **A.**   Yes.

4     **Q.**   -- when you saw the police come that you were going to be  
5     searched?

6     **A.**   Yes, I do.

7     **Q.**   All right.

8     **A.**   That's why I was honest with him and I told him because I  
9     had a little piece of heroin on me, you know.  That's why I  
10    told him before, I mean.

11    **Q.**   Where was that heroin?

12    **A.**   It was in my bra.

13    **Q.**   And you knew they were going to find it; right?

14    **A.**   Yeah, of course.

15           But can I just say that, one, I wasn't in the storage  
16    locker; and, two, it was not in my name nor Mr. Crosby's.

17    **Q.**   You mentioned you had breakfast that day before you went  
18    out to the storage locker; correct?

19           Is it true that the reason you went out to the storage  
20    locker was to use heroin?  That was the purpose that morning?

21    **A.**   Not to use it.  I mean -- I mean, how -- I could -- when I  
22    was using I could use it anywhere I wanted to, you know.  I  
23    mean, I had two loaded syringes ready to go.  So I didn't have  
24    to go out to the storage locker just to use it.  It makes no  
25    sense.  I already stated that we went out there for Burgess to

1 store it because it was too much to carry around.

2 **Q.** That's fine.

3 How much heroin did you use before the police officers  
4 showed up and arrested you?

5 **A.** I don't think I used any. I didn't get out of the car.

6 **Q.** No, I'm talking about that day.

7 That day you used heroin before the police arrived;  
8 correct?

9 **A.** No. In the morning, when I first woke up, but not right  
10 before the police arrived.

11 **Q.** Yeah. That's what I'm -- that's what I'm getting at. I'm  
12 getting at in the morning when you first woke up, the first  
13 thing you did was use heroin; correct?

14 **A.** Yes. I was sick.

15 **Q.** And by taking the heroin, that's part of the struggle to  
16 not be sick at that moment; correct?

17 **A.** Exactly.

18 **Q.** Okay. And in addition to the heroin you took that morning  
19 when you first woke up, you had two syringes that were loaded  
20 with heroin on your person when the police showed up; correct?

21 **A.** Yes. I stated that a minute ago.

22 **Q.** Those syringes you had planned to use that day, but it was  
23 interrupted by the arrival of the police officers; correct?

24 **A.** No. They -- I was -- they were in my purse. I mean, if I  
25 had planned to use them, they would have been used. I mean, I

1 have -- I was -- I was there in front of the -- sitting in  
2 front of the storage locker in the car for about five minutes,  
3 long enough to use it if I wanted.

4 But, I mean, it's obvious they were in my purse because I  
5 told the police officers where they were. They were inside  
6 the pouch inside my purse. So if they were ready, if I was  
7 going to use them, they would have been in my hand.

8 **Q.** At the storage locker where you were, were there digital  
9 scales?

10 **A.** Yes.

11 **Q.** How many were there?

12 **A.** I don't know. I think two maybe.

13 **Q.** What is the reason that the digital scales were there?

14 **A.** To make sure everything comes out right, you know, that we  
15 don't -- that nobody gets too much or too little.

16 **Q.** For using it or for selling it?

17 **A.** For both.

18 **Q.** Okay. There was a time after you were arrested when you  
19 saw my client, Mr. Furminger, in the Mission District. Do you  
20 remember that?

21 **A.** Yes, I do.

22 **Q.** Okay. So let me ask you about that for a moment, if I  
23 could.

24 It was just a couple weeks after the episode that you  
25 testified about involving the storage locker; correct?

1     **A.** Yes. Maybe -- honestly, I don't really remember. I mean,  
2     I know it was sometime after because I was nervous because I  
3     was out on bail. And I was sitting in the car by myself again  
4     and waiting for Burgess to come outside of his residence.

5     And I didn't just see Mr. -- what is his --

6     **Q.** Furminger?

7     **A.** Furminger?

8     **Q.** Right.

9     **A.** Yeah, it wasn't just him. It was two other gentlemen that  
10    were with him.

11    **Q.** So you mentioned just now you were nervous because you  
12    were out on bail. And what made you nervous was two things,  
13    and correct me if I'm wrong. One thing was if you get  
14    arrested while you're out on bail --

15    **A.** We just bailed out again.

16    **Q.** Right. But it's an extra charge, isn't it, getting  
17    arrested while you're on bail? You know that; correct?

18    **A.** Yeah, it's another case. But, I mean, I'm already -- I  
19    took probation and I'm off probation already. Finished  
20    without any violations or anything.

21    **Q.** Understood.

22         But going back to 2009, and now it's after Thanksgiving  
23    but before Christmas, and you ran into Mr. Furminger again.  
24    I'm asking you about that.

25         And you were on probation there in the predecessor case,

1 the little misdemeanor deal you made; right?

2 You made a misdemeanor deal that we talked about before  
3 you got arrested Thanksgiving week?

4 **A.** Yes.

5 **Q.** And you were at risk to have your probation violated in  
6 that case; correct?

7 **A.** Uhm, yeah, I guess. I mean, I had -- I had drugs on me.  
8 I mean --

9 **Q.** Well, I'm going to get to that in a second. But just  
10 chronologically, you were on probation in the old case, and  
11 that could have been violated, which means you go back to  
12 jail; correct?

13 **A.** But it didn't get violated. It was misdemeanor probation.  
14 You know, there's no such thing as violating you know, my  
15 probation. You either -- you get out on felony probation,  
16 which is what happened to me.

17 **Q.** You had in mind that you could not be violated on a  
18 misdemeanor violation?

19 **A.** There's no such thing. You get arrested. And then in  
20 court you get released on felony probation.

21 **Q.** All right. So you were out on felony probation?

22 **A.** No, misdemeanor.

23 **Q.** On the Thanksgiving week episode?

24 **A.** I hadn't gotten -- hadn't gotten sentenced to anything  
25 yet. I was still on misdemeanor probation.

1 Q. You had a pending case?

2 A. Yes.

3 Q. Pending felony case?

4 A. Uh-huh.

5 Q. And when you saw Mr. Furminger the last time -- now we're  
6 talking about between Thanksgiving and Christmas -- you knew  
7 you were still subject to warrantless search; correct?

8 A. Yes.

9 Q. And you had heroin in your bra; right?

10 A. I did, but --

11 Q. And you had money on you; correct?

12 A. Yeah, I had money on me.

13 Q. Because you were selling that day; correct?

14 A. Uhm, yeah, I was. I mean --

15 Q. So here's my question for you: That day when you were out  
16 selling and you had --

17 A. I wasn't out selling that day at that moment. I mean, I  
18 always had money on me, you know. I mean, Mr. Crosby made  
19 sure of that. Burgess did.

20 Q. I'm not criticizing you.

21 A. Sorry.

22 Q. I'm just trying to put it in perspective here.

23 A. Uh-huh.

24 Q. The episode where you saw Mr. Furminger between  
25 Thanksgiving and Christmas, you were supporting yourself by

1 selling heroin; correct?

2 **A.** Yes.

3 **Q.** And you were struggling with your own drug dependency;  
4 correct?

5 **A.** Yes. I mean, but --

6 **Q.** And you had heroin in your bra; correct?

7 **A.** Yes, I did.

8 **Q.** But he didn't find it, and you were not arrested. Am I  
9 right?

10 **A.** No. But -- I mean, yes, you're right. And the reason to  
11 that is because --

12 **MR. GETZ:** Thank you.

13 **THE WITNESS:** Can I keep talking, Your Honor, or no?

14 **THE COURT:** Well, I'll see if -- it's up to the  
15 government whether they're going to ask you a further question  
16 in that regard. So if you wait a minute.

17 Well, Ms. Caffese.

18 **MS. CAFFESE:** No questions, Your Honor. Thank you.

19 **REDIRECT EXAMINATION**

20 **BY MR. VILLAZOR:**

21 **Q.** Ms. Ponzer, would you like to continue answering that  
22 question?

23 **A.** Yes.

24 The reason why I wasn't arrested was because Burgess had  
25 come out, and he happened to have -- and they saw him, and

1 they said, oh, okay, you know, because he was going --

2 Mr. Furminger was going to take me down to the station.

3 That's why I was nervous that day, you know, because when  
4 he had -- he had threatened me, you know, to take me down  
5 there and have a female officer search me.

6 And, you know, I -- immediately I said, well, I don't have  
7 anything on me, and I -- you know, I pulled my bra out, and I,  
8 you know, was showing I didn't have anything on me, because  
9 they'd already searched my person.

10 And that's when money fell out of my bra. And he --  
11 Mr. Furminger stated that, oh, well, I can smell the heroin,  
12 you know. And so they -- they were ready to take me down to  
13 the station. And then, like I said, Burgess came walking down  
14 the street. And they saw him, and they left me alone.

15 **Q.** Ms. Ponzer, when you said money fell out of your bra,  
16 about how much money did you have?

17 **A.** Couple hundred maybe, \$2- to \$500 possibly.

18 **Q.** And you were out on the street at the time prior to seeing  
19 Mr. Furminger that second time?

20 **A.** I was standing outside of the car smoking a cigarette.

21 And I saw Mr. Furminger and his -- his fellow officers, they  
22 drove by in their gold car. I think it was a gold Intrepid, I  
23 think, four-door.

24 And they drove by, and I recognize the car. And I saw  
25 them turn back and look and recognize me. So I got back in



1 the car and locked the doors.

2 And then, of course, they came back around and I had no  
3 choice but to open the door and, you know, I mean --

4 **Q.** Where were --

5 **A.** I was in the car, and it was parked on Julian Street,  
6 between 14th and 15th. I was waiting for Mr. Crosby to come  
7 out of his residence around the corner.

8 **MR. VILLAZOR:** No further questions.

9 **THE COURT:** Mr. Getz?

10 **RECROSS EXAMINATION**

11 **BY MR. GETZ:**

12 **Q.** Ms. Ponzer, the episode you were just talking about, that  
13 happened before Christmas but after Thanksgiving, you and  
14 Mr. Crosby were selling heroin that day; correct?

15 **A.** Yes. We've already established that. Sorry. Sorry.

16 **Q.** You had heroin in your bra, which Mr. Furminger did not  
17 find; correct?

18 **A.** No. How could he? He's a male officer. He can't search  
19 me. But he stated because he said he had smelled it. If it  
20 wasn't him, it was one of his other -- it was one of the other  
21 officers.

22 One of them said, "Oh, you know, I can smell it." You  
23 know, that's why I was so nervous about --

24 **Q.** And you told them -- you told them that you did not have  
25 any heroin on you?

1     **A.**   Of course I did.

2     **Q.**   And that was a lie; correct?

3     **A.**   Of course, I told them that.  I didn't want to go to jail.

4     **Q.**   Exactly.  And you won that day, didn't you?  You won.  You  
5     got to stay out?

6     **A.**   Well, only because Mr. Crosby came walking down the street  
7     and came up just in time and he -- he had heroin on him.  They  
8     found it.  They searched him and they found it in his  
9     backpack.  And he ended up going to jail, so.

10    **Q.**   He did.  And you helped bail him out, didn't you?

11    **A.**   Of course.

12         Yes.

13                 **MR. GETZ:**  I have nothing further.

14                 **MR. VILLAZOR:**  No further questions, Your Honor.

15                 **THE COURT:**  Ms. Caffese.

16                 **MS. CAFFESE:**  No, Your Honor.  Thank you.

17                 **THE COURT:**  Okay.  Thank you very much for coming.

18    You're excused.

19         (Witness excused.)

20                 **THE WITNESS:**  Thank you.

21                 **THE COURT:**  Okay.  The government's next witness.

22                 **MR. HEMANN:**  Thank you, Your Honor.

23    The United States calls Mary Morentz.

24                 **THE CLERK:**  Will the witness please step forward and  
25    take the witness stand.

1       Remain standing and raise your right hand.

2               **MARY LOUISE MORENTZ, PLAINTIFF WITNESS, SWORN**

3               **THE WITNESS:**   I do.

4               **THE CLERK:**   Please be seated.

5       Please state your full name, spell your last name for the  
6       record.

7               **THE WITNESS:**   Mary Louise Morentz.   M-o-r-e-n-t-z.

8                       **DIRECT EXAMINATION**

9       **BY MR. HEMANN:**

10      **Q.**   Good morning.   What do you do for a living?

11      **A.**   I'm a police officer with the City and County of San  
12      Francisco.

13      **Q.**   How long have you been an officer with the City and County  
14      of San Francisco?

15      **A.**   Over 20 years.

16      **Q.**   What do you do currently?

17             What kind of job do you have with the SFPD?

18      **A.**   I am the application administrator for the HRMS PeopleSoft  
19      system.

20      **Q.**   And can you explain to the jury what that is?

21      **A.**   PeopleSoft system is your payroll personnel and training  
22      application that the P.D. has been using since 2000.

23      **Q.**   And what kind of information does it contain or track?

24      **A.**   It tracks personnel job transfers and it tracks  
25      timekeeping payroll functions, the days worked, days off.

1 Q. Have you, Officer Morentz, been asked to provide official  
2 San Francisco Police Department time records for four SFPD  
3 officers?

4 A. Yes, I have.

5 (Trial Exhibits 314 through 317 marked for  
6 identification.)

7 BY MR. HEMANN:

8 Q. I'm going to hand you four documents marked Exhibits 314,  
9 315, 316, and 317, and ask you if those are among the  
10 documents that you provided pursuant to a subpoena from the  
11 U.S. Attorney's Office?

12 A. Yes.

13 Q. And who were the officers that those documents pertained  
14 to? If you could say them, sort of, by exhibit number that  
15 you'll see down at the bottom right-hand corner.

16 A. Exhibit 315, Robles A number A01427.

17 Exhibit 314, Furminger, A number A04938.

18 Exhibit 316, Vargas, A number A06947.

19 And Exhibit 317, Zachos, A number is A01806.

20 Q. And could you describe for the jury what those four  
21 documents are?

22 A. These four documents are the electronic time files, as we  
23 call it, from the HRMS application. These are the work  
24 records of these four individuals.

25 Q. For what year?

1     **A.** For the year 2009, January 1st to December 31st.

2                 **THE COURT:** Admitted, all four.

3                 (Trial Exhibits 314 through 317 received in evidence.)

4                 **MR. HEMANN:** Thank you, Your Honor.

5     **BY MR. HEMANN:**

6     **Q.** Now, I have these, Officer Morentz, on -- what kind of  
7 documents are these? Are they Excel spreadsheets?

8     **A.** They are Excel spreadsheets.

9     **Q.** As you know, they are a little bit cumbersome to print  
10 out. And I want to make this go fast, so I have it in two  
11 ways.

12                Did you provide these electronically to the United States?

13     **A.** Yes, I did.

14     **Q.** Would you prefer to look at them in paper form -- and I  
15 can get you a folder to use as a straight edge -- or  
16 electronically?

17     **A.** Electronically, please.

18                **MR. HEMANN:** Your Honor, may I show them -- any  
19 objection to me showing these electronically?

20                **MS. CAFFESE:** No objection.

21                **MR. HEMANN:** Okay. And if I could orient the  
22 witness, Your Honor.

23                I'm handing the witness a laptop.

24     **BY MR. HEMANN:**

25     **Q.** And you can see them down -- if you look at XL down at the

1 bottom, Robles, Zachos, Furminger, and Vargas. And you can  
2 navigate between them if you wish.

3 **A.** Yes, sir.

4 **Q.** So let me put them on the other side of the microphone so  
5 you can see that.

6 Okay. So you have in front of you the paper copies of  
7 these four exhibits as well as the electronic Excel  
8 spreadsheets on the laptop computer.

9 Is that correct?

10 **A.** Yes, sir.

11 **Q.** So I -- first, a very brief question with regard to  
12 Officer Zachos.

13 Have you reviewed Officer Zachos's time records that are  
14 in the document which is Exhibit 317?

15 **A.** Yes, I did.

16 **Q.** The time records show that he was off work for an extended  
17 period of time in 2009; is that correct?

18 **A.** Correct.

19 **Q.** Could you tell the jury what Officer Zachos's last regular  
20 day of work was in February 2009?

21 **A.** Officer Zachos was marked SP, which is sick time with pay,  
22 on February 15th. And there is several of these starting in  
23 February.

24 **Q.** And if you could scroll through Officer Zachos's records  
25 after February 15th, can you tell the jury when he ultimately

1 returned to his normal or regular duty shift for the first  
2 time?

3 **A.** First date, there are mixed -- there's a regular in August  
4 8, that he returned to P.D. for couple more days. And it  
5 looks like August 14th is another regular workday.

6 **Q.** Okay. So August 8th is the first regular workday it  
7 shows?

8 **A.** Correct.

9 **Q.** Thank you.

10 Okay. Now I'm going to ask you to look at six incident  
11 reports from 2009, just for the purpose of establishing a  
12 date. And you have in front of you, just to your left, an  
13 incident binder.

14 If you could look at tab 1. There are a number of  
15 documents behind tab 1. In particular, not the photograph but  
16 Exhibit 246?

17 **A.** Yes, sir.

18 **Q.** Do you see that?

19 **A.** Yes, I do.

20 **Q.** And do you recognize that as the San Francisco Police  
21 incident report?

22 **A.** Yes, I do.

23 **Q.** And do you see a date --

24 **MR. HEMANN:** And all these documents will be in  
25 evidence, Your Honor.

1 **BY MR. HEMANN:**

2 **Q.** Do you see a date of that incident report?

3 **A.** The occurrence date was February 19th of 2009.

4 **Q.** Okay. So focusing on February 19th, 2009, I'm going to  
5 ask you for each of these to tell the jury what the time  
6 status was for each of the three remaining officers; Robles,  
7 Vargas, and Furminger.

8 So starting with Mr. Robles on the 19th of February 2009,  
9 what was his time status?

10 **A.** He has three time statuses for that day. The first one is  
11 called Sequence 1. He is normally H, or watch off that day,  
12 and not supposed to be working, or not scheduled to work.

13 **Q.** Okay.

14 **A.** The second sequence is an OE, overtime that he requested a  
15 compensation rate from 0600 to 1400 at Mission Station for an  
16 arrest. And it was last modified on the 20th, at 8:05 in the  
17 morning by Mominis Merna (phonetic).

18 **Q.** Okay.

19 **A.** The third sequence number, meaning that record was split,  
20 for the same day is an OT3, which is an arrest at overtime  
21 rate, at Mission Station for an arrest. And it was last  
22 modified by Furminger, A04938, on February 20, at 6:21 in the  
23 morning.

24 **Q.** So do the records show that Officer Robles worked on the  
25 19th, from 0600 to 1900 that day?



1 **A.** Correct.

2 **Q.** Comprising of both overtime hours and overtime for an  
3 arrest?

4 **A.** Overtime and comp time for an arrest, yes, sir.

5 **Q.** Did Officer Vargas work that day, according to SFPD  
6 records?

7 **A.** On 2/19, Officer Vargas was off that day, watch off.

8 **Q.** And that is designated on those records by an H; correct?

9 **A.** Correct. H is designated for being watch off.

10 **Q.** Did Officer Vargas -- do the records show that Officer  
11 Vargas worked either -- any sort of overtime that day?

12 **A.** No.

13 **Q.** Mr. Furminger, what do the records show with regard to his  
14 work on the 19th of February 2009?

15 **A.** He has two work records. The first record is a regular  
16 normal shift day, working 0600 to 1100 hours at Mission  
17 Station. That record was last modified by Furminger, No.  
18 A04938, on 2/19, at 8:26 in the morning.

19 The second record is an OU, or comp time, meaning that he  
20 took time off on the same day, at Mission Station, from 1100  
21 hours to 1600 hours. And the person that entered that card is  
22 also Furminger, A04938. And the record was last modified on  
23 2/19, at 8:25 in the morning.

24 **Q.** So Mr. Furminger worked that day from 0600 to 1100, and  
25 then was off for comp time from 1100 to 1600?

1 **A.** Yes, sir.

2 **Q.** Could you look at tab 3 in the binder to your left. And  
3 the report -- the incident report that is marked as Exhibit  
4 74, please. It's a couple of tabs in.

5 **A.** Exhibit 74. 72?

6 **Q.** 74.

7 **A.** 74.

8 **Q.** On that incident report, what is the date?

9 **A.** Date is March 4th, 2009.

10 **Q.** Turning back to the time records for Mr. Robles, could you  
11 tell the jury what they show with regard to Mr. Robles's time  
12 on March 4, 2009?

13 **A.** There are two lines of record for Mr. Robles. There is a  
14 regular or normal shift worked at 0600 to 1600 hours at  
15 Mission Station. And that was his normal workday.

16 The second record is an OT3, which is an arrest, at  
17 Mission Station at 1600 hours to 2100 hours.

18 **Q.** And when you say OT3, is that overtime for an arrest?

19 **A.** Overtime for an arrest, yes.

20 **Q.** And are officers compensated differently for overtime for  
21 an arrest than for regular time?

22 **A.** Yes, they are, at 1.5 overtime rate.

23 **Q.** 1.5 overtime rate?

24 **A.** 1.5 overtime rate.

25 **Q.** So it's one and a half times their normal hourly pay?

1     **A.**    Correct.

2     **Q.**    What about Mr. Vargas for March 4, 2009?

3     **A.**    Vargas has two records.  One is a regular or normal shift  
4    day worked at Mission Station, 0600 to 1600 hours.

5           And a second overtime line, OT3 arrest at overtime, at  
6    Mission Station, from 1600 to 2100 hours, as an arrest.  And  
7    last entered or modified by Furminger A04938 on 3/7/09, at  
8    1305 hours.

9     **Q.**    And what do the time worksheets show to Mr. Furminger's  
10   work on March 4, 2009?

11    **A.**    On March 4th, he has two work records.  The first one is  
12   that he is off duty, or watch off.  The second one is an OT3  
13   line, an arrest at 1.5, from 0900 to 1300 hours.

14           **THE COURT:**  I'm sorry, what?

15           **THE WITNESS:**  From 0900 to 1300 -- excuse me.  From  
16   0900 to 1300 hours at Mission Station for an arrest entered --  
17   or last modified by Furminger, A04938, on 3/5/09 at 1018  
18   hours.

19    **BY MR. HEMANN:**

20    **Q.**    So Mr. Furminger was on his regular holiday day on March  
21   the 4th, 2009, and came in for overtime for four hours,  
22   according to SFPD time records?

23    **A.**    Yes.

24    **Q.**    And that week, Officer Morentz, did Mr. Furminger have  
25   other regular holiday time scheduled or in the days adjacent

1 to the 4th of March?

2 **A.** 4th of March, 5th of March, and 6th of March, he was  
3 regularly scheduled to be off. And then he took a vacation  
4 day on the 7th of March.

5 **Q.** So he was off from the 4th to the 7th with the exception  
6 of this four-hour arrest on the 4th of March; correct?

7 **A.** Correct. He also had two overtime records on the 7th,  
8 coinciding with his VA date.

9 **Q.** So he came in for overtime on the 7th?

10 **A.** Correct.

11 **Q.** If you could turn to tab 5, please, and there's an Exhibit  
12 247, one tab in?

13 **A.** Correct.

14 **Q.** What is the date of the incidents on this incident report?

15 **A.** May 25th, 2009.

16 **Q.** If you could look at the time records for, first,  
17 Mr. Robles, on May 25th, 2009.

18 **A.** May 25th, 2009, Mr. Robles had two work records. The  
19 first one is HP, or holiday pay. He worked the holiday at  
20 Mission Station from 0600 to 1600 hours.

21 The second record is an overtime 3, which is an arrest at  
22 Mission Station from 1600 hours to 2000 hours. And it was  
23 last modified by Furminger, A number 04938, on 5/27/09, at  
24 0913 hours.

25 **Q.** With regard to working the holiday, how is that

1 designated? By what letters?

2 **A.** The holiday is designated by HP for holiday pay in this  
3 instance.

4 **Q.** And for May 25th, 2009, or Memorial Day, would officers  
5 get paid holiday pay for working that day?

6 **A.** If they were working that day, yes.

7 **Q.** Mr. Vargas, please, Officer Morentz. Could you tell us  
8 what his pay status was on May 25th, 2009, and then  
9 Mr. Furminger.

10 **A.** May 25th, 2009, first record is a holiday pay. Mission  
11 Station, from 0600 to 1600 hours.

12 The second record is an OT3 arrest. Mission Station, from  
13 1600 hours to 2000 hours for an arrest. And last modified by  
14 Furminger A number 04938, on 5/27/09, at 0913 hours.

15 **Q.** And that was the record for both Mr. Vargas and  
16 Mr. Furminger, or was that just Mr. Vargas?

17 **A.** That's Mr. Vargas.

18 **Q.** Mr. Furminger, please.

19 **A.** 5/25, two records, holiday pay. 0600 to 1600 hours at  
20 Mission Station. The second record is an OT3 arrest at  
21 Mission Station, from 1600 hours to 1900 hours for an arrest.  
22 And last modified by Furminger, A number 04938, at -- on  
23 5/27/09, at 0912 hours.

24 **MR. HEMANN:** Your Honor, we have about three more to  
25 go through. We'll take probably ten minutes. And I don't

1 know if there will be cross. And so I just wanted to let the  
2 Court know we could break now, would be easiest enough, or we  
3 could break later.

4 **THE COURT:** Do you want to break now?

5 (Jurors shake their heads.)

6 **THE COURT:** No?

7 They're just fascinated by this.

8 **MR. HEMANN:** It's gripping.

9 (Laughter)

10 **MR. HEMANN:** It is.

11 **THE COURT:** We are all at the edge of our seats.

12 (Laughter).

13 **MR. HEMANN:** It is gripping, Your Honor.

14 **THE COURT:** Go right ahead.

15 **MR. HEMANN:** Mr. Villazor is falling asleep on me  
16 over here. We'll foray on here, Your Honor.

17 **BY MR. HEMANN:**

18 **Q.** Tab 6, please.

19 Oh, and, actually, there's no incident report in -- for  
20 this, so let me just direct your attention, Officer Morentz,  
21 to June the 18th, 2009. June 18, 2009. And if you could give  
22 us the time records for Mr. Robles that day.

23 **A.** 6/18/2009, one work record, normal shift, 0500 to 1500  
24 hours, at Mission Station.

25 **Q.** And Mr. Vargas on June 18th?

1 **A.** One work record, regular work, Mission Station, 0500 to  
2 1500 hours.

3 **Q.** And Mr. Furminger that same day, June the 18th.

4 **A.** One record, watch off, meaning he was off duty.

5 **Q.** Thank you.

6 If you could turn to tab 8, please. There was an incident  
7 report behind the photograph. What is the date of that  
8 report?

9 **A.** October 7th -- pardon me, October 2nd, 1999.

10 **Q.** Sorry, October 2nd?

11 **THE COURT:** '09.

12 **THE WITNESS:** '09, I'm sorry.

13 **BY MR. HEMANN:**

14 **Q.** 2009?

15 **A.** 2009.

16 **Q.** Could you tell us what the time records show for  
17 Mr. Robles on that day.

18 **A.** On October 2nd, he records two lines. The first line is a  
19 regular workday at Mission Station, from 0600 to 1600 hours.

20 The second line is an OT line, arrest on overtime, from  
21 1600 hours to 1900 hours at Mission Station. And last  
22 modified by Furminger, A number A04938, on 10/5/09, as 544  
23 hours.

24 **Q.** And Mr. Vargas, what was his duty status on the 2nd of  
25 October of '09?

1 **A.** He's recording two lines. The first one is a regular or  
2 normal shift worked from 0600 to 1600 hours at Mission  
3 Station.

4 And a second OT3 line, arrest at 1600 to 1900 hours at  
5 Mission Station. Last modified by Furminger, A04938 A09438,  
6 on 10/5/09, at 544 hours.

7 **Q.** And what was Mr. Furminger's duty status on October the  
8 2nd, 2009?

9 **A.** He records two lines. The first one, line that he is  
10 watch off, or H, for the day. The second line is an OT5,  
11 which is extended workweek overtime, at Mission Station, with  
12 the event code 090000D, Safe Schools. It was entered or  
13 modified, last modified by Furminger, A04938, on 10/2/09, at  
14 0912 hours.

15 **Q.** So you mentioned a couple of things in that regard that  
16 were -- came up the first time.

17 OT5, how does that differ from OT3?

18 **A.** OT3 is your arrest. OT5 is a voluntary workweek, that  
19 you're volunteering to work overtime. Not mandatory.

20 **Q.** And there was some code associated with that, you said?

21 **A.** The OT5 code.

22 **Q.** Some other code you mentioned?

23 **A.** Event code.

24 **Q.** Event code, sorry.

25 **A.** The event code is what we used to designate what this



1 overtime is charged against. In this instance, it's for Safe  
2 Schools.

3 **Q.** Do you know what that means?

4 **A.** Just that it's for Safe Schools. It's something that a  
5 station most likely wanted to enforce and had overtime to have  
6 the officers do overtime.

7 **Q.** And, finally, Officer --

8 **THE COURT:** Before we leave that, does it indicate  
9 the number of hours?

10 **THE WITNESS:** Yes, it does.

11 **THE COURT:** How many hours? And does it indicate the  
12 time?

13 **THE WITNESS:** Yes, it does. It's 0600 to 1400 hours.

14 **THE COURT:** 0600?

15 **THE WITNESS:** To 1400 hours.

16 **THE COURT:** 1400. Okay. Thank you.

17 **BY MR. HEMANN:**

18 **Q** And obviously, we have been talking about -- this is all  
19 military time?

20 **A** Yes, it is.

21 **Q** So that would be 1:00 in the morning to 2:00 in the  
22 afternoon?

23 **A** Correct.

24 **Q** And finally with regard to -- please turn to Tab 10.

25 There is a report behind the photograph. What is the date of

1 this report?

2 **A** November 19, 2009.

3 **Q** And this is for an event that took place, an incident at  
4 4050 19th Avenue. Correct?

5 **A** Yes, sir.

6 **Q** What is Mr. Robles's duty status that day? November 19,  
7 '09.

8 (Witness examines document)

9 **A** He has two records. The first one is regular or normal  
10 shift at Mission Station from 0600 to 1600 hours. A second  
11 OT3 line, arrest, at Mission Station, from 1600 hours to 2100  
12 hours. For an arrest. And that's modified by Furminger,  
13 A04938 on 11-26-09 at 1428 hours.

14 **Q** And, Mr. Vargas, that same day, the 19th of November, '09?

15 **A** It records two lines. The first one is a regular line.  
16 0600 to 1600 hours at Mission Station. And an overtime line,  
17 OT3 arrest, at Mission Station, from 1600 hours to 2100 hours  
18 for an arrest. And that's modified by Furminger, A49 -- 04938  
19 on 11-26-09, at 1429 hours.

20 **Q** And finally, Mr. Furminger's time for the 19th of  
21 November, 2009?

22 **A** He records two lines. The first line is an "H," means  
23 that he is watch off. The second is an OT3 line, OT3 at  
24 arrest, at Mission Station from 1600 hours to 2100 hours for  
25 an arrest. And that's modified by Furminger, A04938 on

1 11-26-09 at 1435 hours.

2 **Q** So each of the three officers that day showed an arrest,  
3 an overtime arrest from 1600 to 2100 hours.

4 **A** Yes, sir.

5 **Q** What was Mr. Furminger's work status on the 18th of  
6 November, the day before?

7 **A** He has two lines of record. The first one is a regular or  
8 normal shift from 0600 to 1,300 hours and the second line, VA,  
9 which is vacation day, from 1300 hours to 1600 hours.

10 **Q** And then, you mentioned one line on the 19th is for  
11 regular watch off, meaning off duty, correct?

12 **A** Correct.

13 **Q** And then on the 21st -- the 20th, 21st and 22nd of  
14 November what is Mr. Furminger's duty status?

15 **A** All three days of duty status are H, watch off.

16 **Q** So, did not work the 20th, the 21st, and 22nd.

17 **A** Correct.

18 **MR. HEMANN:** I have no further questions, Your Honor.

19 **THE COURT:** Well, you are familiar with the custom  
20 and practice or the procedure in the police department where  
21 one person authorizes a modification to the time records?

22 **THE WITNESS:** Yes, I am.

23 **THE COURT:** And, is that what was occurring with  
24 respect to the modifications in which you identify a time, and  
25 an officer as being the authorizing officer?

1           **THE WITNESS:** The supervisor in any instance would be  
2 a sergeant or on-duty -- that is, our supervisor can modify an  
3 employee's record within his command.

4           **THE COURT:** And so when you've identified Sergeant  
5 Furminger as the person who authorized the modification in the  
6 records, as you recited them, is that what was occurring?

7           **THE WITNESS:** No. What was occurring was the  
8 sergeant was modifying the records, himself, within the HRMIS  
9 application.

10          **THE COURT:** What does that mean?

11          **THE WITNESS:** That means he logged into the system  
12 with his employee ID as password, he went to the specific day  
13 or the employee's scheduling records, and made those entries  
14 and changed it himself.

15          **THE COURT:** Thank you.

16          **MR. HEMANN:** May I follow up on that, Your Honor?

17          **THE COURT:** Yes.

18          **MR. HEMANN:** Thank you.

19 **BY MR. HEMANN:**

20 **Q** So with regard to Mr. Robles's time on the 19th of  
21 November, '09, you said there were two lines, regular and OT3.

22 Correct?

23 **A** Correct.

24 **Q** Did the regular time need to be approved later by anybody?

25 **A** The regular time is your normal work status. Your pattern

1 days off. Your regular hours.

2 This instance, this tells me that it is his normal system  
3 set work record. And there were no changes to it.

4 **Q** And so, that's with regard to the regular time that day.  
5 With regard to the OT3 or overtime time that day, is that an  
6 example of what the Court was -- was asking about where that  
7 had to later be approved by a supervisor, in this case,  
8 Mr. Furminger?

9 **A** Approved by, and in this case, entered by Mr. Furminger.

10 **Q** And then, with regard to Mr. Furminger's own overtime  
11 status that day, that was also approved, entered and approved  
12 by Mr. Furminger?

13 (Witness examines document)

14 **A** Yes. The last person who modified that record was  
15 Mr. Furminger.

16 **Q** And there's nothing wrong with a sergeant -- just in terms  
17 of timekeeping, there's nothing wrong with a sergeant  
18 approving -- entering and approving a subordinate's time, or  
19 entering and approving his own time. Correct?

20 **A** Correct.

21 **MR. HEMANN:** Thank you, Your Honor.

22 **THE COURT:** Any cross?

23 **MR. PASSAGLIA:** Nothing on behalf of Sergeant  
24 Furminger.

25 **THE COURT:** Yeah.

1           **MS. CAFFESE:** Yes, Your Honor.

2           **THE COURT:** Go ahead, Ms. Caffese.

3                           **CROSS EXAMINATION**

4           **BY MS. CAFFESE:**

5           **Q** Good afternoon -- good morning, Officer.

6           **A** Good morning.

7           **Q** I have an exhibit that's been marked Exhibit 363.

8                       **MR. HEMANN:** No objection to that, Your Honor.

9           **THE COURT:** 363, admitted.

10                   (Trial Exhibit 363 received in evidence)

11           **BY MS. CAFFESE:**

12           **Q** Good morning, Officer. My name is Teresa Caffese, and I  
13 have some questions for you.

14                   I'm going to give you what's been marked 363 here.

15           **A** Yes, ma'am.

16           **Q** So, Officer, just some preliminary questions before we get  
17 to that.

18                   I understand that you took the work history records from  
19 Officer Robles, for example, and put it into an Excel  
20 spreadsheet. Is that right?

21           **A** Correct.

22           **Q** And you have been testifying about those matters on direct  
23 examination?

24           **A** Yes, ma'am.

25           **Q** Now, if you could look at 363, and, my understanding -- do

1 you recognize these -- this document here?

2 **A** Yes. It is an employee work history report.

3 **Q** Right. And essentially, am I correct that this is the  
4 same type of information in part that you testified about  
5 during your direct examination?

6 **A** In part, yes.

7 **Q** Yes. And, the part that you testified about was the year  
8 2009. Correct?

9 **A** Correct.

10 **Q** All right. And those items, entries that you testified  
11 are part of this document (Indicating) also, just -- why don't  
12 you just briefly look at it to make sure they are included in  
13 this.

14 (Witness examines document)

15 **Q** Generally speaking.

16 **A** Generally speaking. Yes, generally speaking.

17 **Q** Okay. So, what's included in this document (Indicating),  
18 363, however, are the work history reports for the year  
19 January 2008, as it applies to Officer Robles.

20 Correct?

21 **A** Yes.

22 **Q** And, I'm going to go to Page -- the second page of this  
23 work history report here. And, it reflects the month of  
24 February of 2008; correct?

25 **A** Yes.

1 Q And it reflects the month of March, 2008. Correct?

2 A Yes.

3 Q And, am I correct that beginning on, for example, March 8  
4 of 2008, going down to March 31st of 2008, Officer Robles was  
5 working out of Mission Station with the exception of a couple  
6 of days here, that I see, that he went to the academy,  
7 presumably for training?

8 Is that correct?

9 A Yes. He was detailed to the academy.

10 Q All right. And in that month, there was also overtime  
11 that was put in.

12 Correct?

13 A Yes.

14 Q All right. And incidentally, just so we're clear, when an  
15 officer receives overtime such as the overtime that was  
16 received by Officer Robles that we've been talking about, that  
17 is approved by a superior officer. Correct?

18 A Yes.

19 Q And that could be a sergeant, but ultimately it's approved  
20 by the lieutenant; correct?

21 A Lieutenant or captain, correct.

22 Q So there are two levels of approval; correct?

23 A Yes.

24 Q Thank you. I just want to move on. And I'm not going to  
25 go through the entire year of 2008, but I do want to ask you



1 about 2008 that we've left off here.

2 And, I'm going to the third page. And I see the months of  
3 April and May.

4 Is that right?

5 (Witness examines document)

6 **A** Yes.

7 **Q** And I see here, that in the months of April and May, there  
8 is was overtime that was actually put in, and approved by  
9 superior officers on behalf of Officer Robles. Am I correct?

10 (Witness examines document)

11 **A** Overtime was put in. But I cannot tell you from this  
12 document who did it.

13 **Q** But there was overtime put in. Correct?

14 **A** Correct.

15 **Q** And I see here from this document that once again, Officer  
16 Robles was assigned to Mission Station, in April and May of  
17 2008. Correct?

18 **A** With some detailing out to the academy and FOB, correct.

19 **Q** What is FOB, by the way?

20 **A** Field Operations Bureau.

21 **Q** And what's that?

22 **A** That's the headquarters of the patrol.

23 **Q** Now let's go on to the next page. And I'm looking at the  
24 months of May and June. And I also see here some overtime  
25 that was put in; is that right?

1     **A**    Yes.

2     **Q**    And I also see here that in the month of May, with the  
3    exception of being assigned or going to the academy for --  
4    looks like eight days or so, eight, nine days or so, Officer  
5    Robles was once again assigned to Mission Station, in May and  
6    June of 2008.  Correct?

7     **A**    Yes.

8     **Q**    All right.  And then the next page, we go on to July and  
9    August.  Is that right?

10    **A**    Correct.

11    **Q**    And we see overtime that's put in down at the bottom of  
12    that page here, some overtime that's put in and approved; is  
13    that right?

14    **A**    Correct.

15    **Q**    And once again, with the exception of about five, six,  
16    seven days that he went to the academy, he was once again  
17    assigned to Mission Station.  Is that right?

18    **A**    Yes.

19    **Q**    All right.  And then we're going on -- I guess I am going  
20    through most of the months here, if I may.

21           But, the same is for September and -- August and September  
22    he was assigned to Mission; is that right?

23           (Witness examines document)

24    **A**    Yes.

25    **Q**    October; is that right?  The next page?

1 (Witness examines document)

2 **A** Yes.

3 **Q** November; is that right?

4 (Witness examines document)

5 **A** Again, with the academy, yes.

6 **Q** Right. And the same thing for December of 2008. Is that  
7 right?

8 **A** Correct.

9 **Q** All right. And in those months, there was overtime that  
10 was put in and approved for Officer Robles. Is that right?

11 **A** Correct.

12 **MS. CAFFESE:** Officer, I have no further questions.  
13 Thank you, ma'am.

14 **THE COURT:** Okay, thank you. You are excused.

15 **THE WITNESS:** Thank you, sir.

16 (Witness excused)

17 **THE COURT:** Anything further?

18 **MR. HEMANN:**

19 (Off-the-Record discussion between counsel)

20 **MR. HEMANN:** We have another witness, Your Honor.

21 **THE COURT:** You have another witness. How long will  
22 this witness be?

23 **MR. VILLAZOR:** Your Honor, maybe 20 minutes.

24 **THE COURT:** Oh, okay. Then we will take a recess.

25 Ladies and gentlemen, we will recess until 11:00.

1 Remember the admonition given to you: Don't discuss the case,  
2 allow anyone to discuss it with you, form or express any  
3 opinion.

4 When you come back, I will give you a timeline where we  
5 are. So, don't make any plans during the recess.

6 Thank you very much.

7 (Jury excused)

8 (The following proceedings were held outside of the  
9 presence of the Jury)

10 **THE COURT:** We're in recess now, on this case.  
11 However, let me call -- I have an order to show cause with  
12 respect to Mr. Waukeen McCoy, who's here.

13 You can all be seated.

14 (A pause in the proceedings from 10:42 to 11:08 a.m.)

15 (The following proceedings were held outside of the  
16 presence of the Jury)

17 **THE COURT:** Pardon me.

18 **MR. HEMANN:** So, Your Honor, it looks like we will  
19 have our last witness. That, after we rest --

20 **THE COURT:** Well, wait one minute, Barbara, will you  
21 please?

22 **THE CLERK:** Okay.

23 **THE COURT:** Sorry; go ahead.

24 **MR. HEMANN:** Mr. Furminger will call one witness --

25 **THE COURT:** Right.

1           **MR. HEMANN:** -- who we anticipate will be relatively  
2 brief.

3           **THE COURT:** Right.

4           **MR. HEMANN:** And then, we don't know --

5           **MS. CAFFESE:** Excuse me. Thank you, Counsel.

6           Your Honor, Mr. Robles has now advised me that he does  
7 wish to testify on his behalf.

8           **THE COURT:** Oh, he is going to testify. Okay. Well,  
9 then we will just see where we are. In terms of time.

10           **MR. HEMANN:** So, Your Honor, we had spoken with Ms.  
11 -- Mr. Caff- -- Mr. Getz and Ms. Caffese over the weekend.  
12 They advised us that their clients were not going to be  
13 testifying.

14           **THE COURT:** Yeah.

15           **MR. HEMANN:** And, based on that, we did not continue  
16 to prepare.

17           **THE COURT:** Well, you better -- you have lunch.  
18 That's the way it is in the real world. Defendant has a right  
19 to testify. Okay. I would have -- I have to ask -- I have to  
20 ask Sergeant Furminger whether -- and I should do that now.

21           Sergeant Furminger, as you know, you have a right to  
22 testify. If you wish. You also have a right not to testify.  
23 But it is individual to you. That is, notwithstanding  
24 whatever your attorney advises you -- and I have to believe  
25 your attorney is extremely competent in this area -- you have

1 an independent right.

2 So, is it correct that you do not wish to testify?

3 Put that -- I just put that in the negative. Do you want  
4 to testify? You have a right to testify if you choose.

5 **DEFENDANT FURMINGER:** Can I reserve the right?

6 **THE COURT:** Pardon me?

7 **DEFENDANT FURMINGER:** Can I reserve the right until  
8 after Mr. Robles testifies?

9 **MR. GETZ:** (Inaudible)

10 **DEFENDANT FURMINGER:** Okay, no.

11 **THE COURT:** Well, that's -- I think what --

12 (Off-the-Record discussion between Defendant and Counsel)

13 **THE COURT:** I think what I would do in that regard is  
14 call Ms. Caffese first to present her case.

15 I'll do that -- in other words, Mister -- Mister --  
16 Sergeant Furminger, I will give you the right to make your  
17 decision after Mr. Robles testifies. If that's what you want.

18 But what I'm going to do in that regard, then, is call  
19 Ms. Caffese for her case, and then go to Officer -- then go to  
20 Sergeant Furminger, because it doesn't strike me that it is  
21 appropriate to have one person put on half the case, and then  
22 go and then put on another issue.

23 **MR. GETZ:** Well --

24 **THE COURT:** I don't know. I could listen to the  
25 government. Do you have a different view? I mean I'll -- I

1 could entertain your view.

2 **MR. GETZ:** Before the government gives -- can I  
3 interject something?

4 **THE COURT:** Of course.

5 **MR. GETZ:** Well, two things. First of all, we are  
6 going to put on Stephanie Furminger.

7 **THE COURT:** Right.

8 **MR. GETZ:** And I fully expect to rest. And I have  
9 talked about this with Mr. Furminger, for weeks.

10 Second of all, you know, obviously the Court has seen that  
11 both side are very prepared for this trial.

12 **THE COURT:** Right.

13 **MR. GETZ:** We have spent a lot of time; everybody has  
14 tried to do their best. And I can just tell the Court that  
15 the government -- the government is facing surprise when they  
16 hear that one of the -- either one or the other Defendant may  
17 testify.

18 And, I would not object to them having the afternoon off  
19 to prepare, because were I in their position, I could not  
20 cross-examine some of these witnesses without the kind of  
21 preparation that they have provided.

22 And it's actually even better for the Defendants, because  
23 the precision that comes to the cross is important in allowing  
24 the record to be made in the way that it should be made.

25 So --

1           **THE COURT:** Mr. Getz has made your best argument.

2           **MR. HEMANN:** He is a smarter man than I am,  
3 Your Honor.

4           **THE COURT:** All right. Well, then, I think -- okay.  
5 I could do that. I could do that.

6           In other words, I don't want to get into some formalism  
7 here; it's just not -- it's not worth it.

8           **MR. GETZ:** No, I understand.

9           **THE COURT:** And we have a constitutional right at  
10 stake, so I want to be very careful in that regard.

11           So what I will do is the following: Given the decision of  
12 at least Officer Robles to testify, I will allow the  
13 government to rest. I will call on Sergeant Furminger for his  
14 case; he can put on a witness. I will then recess for the  
15 day. And, we will resume. But, I'm going to tell the jury to  
16 come back, and we'll resume tomorrow.

17           If your client wishes to testify, he can. If he doesn't,  
18 he doesn't have to. I'll call, then, Officer Robles if he  
19 wants to testify -- I mean, if he doesn't want to testify.  
20 That's why I'm bringing the jury back.

21           **MS. CAFFESE:** As of this moment, Officer Robles wants  
22 to testify.

23           **THE COURT:** Yeah. Okay. Well, we're at the moment  
24 where the moment is. You know, the moment's arrived. So, he  
25 can testify.



1 And, meantime, I'll fill the day up with things involving  
2 you people as well. Because I want to go through jury  
3 instructions this afternoon. So I would rather do it this  
4 afternoon; leave tomorrow open for cross and direct.

5 I don't know how long it's going to take. Do you have an  
6 idea how long your direct is going to be?

7 **MR. GETZ:** (Inaudible)

8 **MS. CAFFESE:** I don't believe it will be four hours.  
9 I think it will be between one to one and a half hours.

10 **THE COURT:** Okay, we'll finish all that. Okay, so, I  
11 think that will be the schedule.

12 Now, is everybody pleased with that schedule?

13 In other words, Mrs. Furminger can testify today. Nothing  
14 will be said about who's resting and so forth. And we'll just  
15 move on to tomorrow and make our decisions. Or this  
16 afternoon.

17 **MR. GETZ:** That's fine.

18 **THE COURT:** Okay? All right.

19 **MR. HEMANN:** That's great. And thank you to Mr. Getz  
20 and Ms. Caffese, both of them, for being very professional.

21 **THE COURT:** Thank Mr. Getz for being professional in  
22 this situation.

23 Bring in the jury.

24 (The following proceedings were held in the presence of  
25 the Jury)

1           **THE COURT:** Okay, let the Record reflect that all  
2 jurors are present; parties are present.

3           Government may call its next witness.

4           **MR. VILLAZOR:** Your Honor, prior to calling our next  
5 witness, the government would move Government Exhibit 318,  
6 which is a joint stipulation exhibit.

7           Some of these stipulations have been already read into the  
8 Record. The rest we plan on reading into the Record  
9 throughout the next witness's testimony.

10          **THE COURT:** Yeah. 318, admitted.

11          (Trial Exhibit 318 received in evidence)

12          **MR. VILLAZOR:** Thank you, Your Honor. Government  
13 calls Special Agent Sandra Flores.

14          **SPECIAL AGENT SANDRA J. FLORES, PLAINTIFF'S WITNESS, SWORN**

15          **THE CLERK:** Please be seated.

16          Please state your full name; spell your last name for the  
17 Record.

18          **THE WITNESS:** Sandra J. Flores. F-L-O-R-E-S.

19                           **DIRECT EXAMINATION**

20          **BY MR. VILLAZOR:**

21          **Q** Good morning, Agent Flores.

22          **A** Good morning.

23          **Q** Agent Flores, will you tell the members of the jury how  
24 long you've worked with the FBI.

25          **A** Since April, 2003.

1 Q When you started out with the FBI, what unit were you  
2 assigned to?

3 A I was assigned -- first, out of Quantico, I was assigned  
4 to the San Jose RA here in San Francisco, working gangs and  
5 violent crime.

6 Q When you say "RA," what is "RA"?

7 A Resident Agency.

8 Q And after that, were you moved?

9 A I was moved to the Oakland Resident Agency.

10 Q What did you do in the Oakland Resident Agency?

11 A I was assigned to the Field Intelligence Group, working  
12 gang intelligence.

13 Q After that, were you then reassigned?

14 A After that, I went to Baghdad for a short period of time,  
15 for about six months. And then shortly thereafter I went to  
16 headquarters, working in the International Corruption Unit.

17 Q "Baghdad" as in Baghdad, Iraq?

18 A Yes.

19 Q Were you there as a Special Agent with the FBI?

20 A Yes, I was.

21 Q What were you doing in Iraq?

22 A Investigating fraud against the government, corruption  
23 cases.

24 Q Then you said you were moved to headquarters. Where is  
25 headquarters?

1     **A**    In Washington, D.C.

2     **Q**    What were you doing in Washington, D.C. with the FBI?

3     **A**    I was assigned for an 18-month temporary duty assignment  
4    to the International Corruption Unit. We supervised  
5    antitrust, fraud -- sorry. Fraud against the government, and  
6    FCPA cases, across the bureau.

7     **Q**    After that 18-month stint, where did you go?

8     **A**    After my time in headquarters, I was -- I came back to  
9    San Francisco in approximately the fall of 2011.

10    **Q**    Agent Flores, are you also a member of the Naval Reserves?

11    **A**    Yes, I am.

12    **Q**    How long have you been enlisted?

13    **A**    I took a commission with the Civil Engineer Corps in 2001.

14    **Q**    During your time as an FBI agent, did you also go abroad  
15   as a Naval Reservist?

16    **A**    I did.

17    **Q**    When was that?

18    **A**    In 2010, spring of 2010, through spring of 2011. I was  
19   deployed to -- with the military. And part of that time I was  
20   in Kandahar, Afghanistan.

21    **Q**    That was as a member of the Naval Reserve?

22    **A**    Yes.

23    **Q**    Agent Flores, you said when you came back to the FBI you  
24   were assigned to the public corruption unit?

25    **A**    I was.

1 Q Are you a member of the investigative team that led to the  
2 case that is before this jury?

3 A I am, yes.

4 Q Have you been sitting in this courtroom during the entire  
5 trial?

6 A Yes.

7 Q Okay. Do you know Cesar Hernandez who testified earlier  
8 today?

9 A I do.

10 Q Excuse me. Earlier in this trial?

11 A Yes.

12 Q Were you one of his designated handling case agents?

13 A I was.

14 Q What does a handling case agent do?

15 A We take reporting from the individual, from the person  
16 providing information. We manage the case file. If there's  
17 payments to be made, we acquire the appropriate funding  
18 approval, and manage the paperwork entailed -- associated with  
19 those payments.

20 Q When you first became involved in this investigation, did  
21 you meet Cesar Hernandez?

22 A Pardon me?

23 Q When you first became involved in this investigation, did  
24 you meet Cesar Hernandez?

25 A Yes.

1 Q And at the time, did he have a telephone?

2 A He did.

3 Q And was that telephone provided to the investigative team?

4 A Yes.

5 Q What did they do with that telephone?

6 A The investigative team took the telephone and downloaded  
7 the information contained on the device.

8 Q I want to show you what's been marked for identification  
9 only as Government Exhibit 49.

10 (Witness examines document)

11 Q Do you see that?

12 A Yes.

13 Q What is that?

14 A This is a download of Mr. Hernandez's phone from -- it  
15 looks like it was downloaded on August 25, 2011.

16 Q What is the phone number of Mr. Hernandez?

17 A (415)240-8767.

18 MR. VILLAZOR: Your Honor, if I may use the writing  
19 pad, I would ask Agent Flores to put that up onto a writing  
20 pad.

21 BY MR. VILLAZOR:

22 Q Agent Flores, did you bring your own Sharpie?

23 A I have a Sharpie you gave me.

24 Q Thank you. Could you please write Mr. Hernandez's name  
25 and his number, 4 -- I'll wait. (415)240-8767.

1 (Request complied with by the Witness)

2 **Q** And Agent Flores, while you are up there --

3 **MR. VILLAZOR:** Your Honor, the parties have  
4 stipulated -- and if I could read into the Record (As read):

5 "SFPD Informant Policy

6 "No. 3. Sergio Sanchez was signed as an SFPD  
7 informant on January 21, 2013. SFPD assigned him  
8 Informant Identification Number 10-04. His cellular  
9 telephone was (415)706-8941 from at least  
10 September 1, 2011 to October 31, 2011. His cellular  
11 telephone was (650)417-8501 from at least November 1,  
12 2011 to November 30, 2012."

13 And Your Honor, with the Court's permission, if Agent  
14 Flores could put Mr. Sanchez's two telephone numbers on?

15 **THE WITNESS:** Can you repeat those, please?

16 **BY MR. VILLAZOR:**

17 **Q** Sergio Sanchez: (415)706-8941, and (650)417-8501.

18 (Request complied with by the Witness)

19 **MR. VILLAZOR:** Your Honor, if I could read another  
20 stipulation into the Record?

21 "Wireless Carrier Records."

22 (Reporter interruption)

23 **MR. VILLAZOR:** (As read)

24 "At all times relevant to Indictment CR-14-102-CRB,  
25 Ian Furminger's personal cellular telephone number is

(415)309-4914."

**BY MR. VILLAZOR:**

**Q** Agent Flores, if you could write that on the board again?  
That's "Ian Furminger, (415)309-4914."

(Request complied with by the Witness)

**MR. VILLAZOR:** Going back to the stipulation:  
"Edmond Robles' personal cellular telephone is  
(925)336-6709."

**BY MR. VILLAZOR:**

**Q** Agent Flores, could you please put that up on the board.  
"(925)336-6709."

(Request complied with by the Witness)

**MR. VILLAZOR:** (As read)  
"Reynaldo Vargas' personal cellular telephone is  
(415)717-2936."

**BY MR. VILLAZOR:**

**Q** Agent Flores, did the FBI obtain additional -- excuse  
me -- additional cellular telephone for Mr. Vargas?

**A** Did we what? I'm sorry?

**Q** Obtain an additional telephone line of Reynaldo Vargas?

**A** An additional, in addition to this (Indicating)?

**Q** In addition to the one that's on the board.

**A** Oh, yes. Yes.

**Q** I'm showing you, just for identification, Exhibit 309.

(Witness examines document)



1 Q And is that the additional cellular telephone that  
2 Mr. Vargas had?

3 A Yes. He had -- he told us he had acquired Nextel  
4 telephones for himself and for Ed Robles' use. They called  
5 them their "police phones," and they were phones that Cesar  
6 Hernandez was also familiar with.

7 Q And what is the cellular telephone identified on Exhibit  
8 309?

9 A There's a phone number of (415)233-5744. And there's a  
10 phone number of (415)233-5743. There's two pages here.

11 Q Okay. Agent Flores, could you please write that on the  
12 board, as well, under Mr. Vargas's cellular telephone?

13 THE COURT: 309 admitted.

14 (Trial Exhibit 309 received in evidence)

15 (Request complied with by the Witness)

16 BY MR. VILLAZOR:

17 Q Agent Flores, during the course of this investigation, did  
18 the FBI identify a Mr. Tuan Hoang as a potential witness?

19 A Yes.

20 Q Did the FBI also obtain his cellular telephone number?

21 A Yes.

22 Q Showing what's been marked as Government's Exhibit 308.

23 (Witness examines document)

24 Q Before you do that, Agent Flores, can you identify what  
25 Government's Exhibit 308 is?

1   **A**   Yes. This is a printout from our telephone applications,  
2   which is a database where we maintain toll data and telephone  
3   information, which identifies his phone number and his name,  
4   address. And other information if we have it, like the  
5   telephone carrier.

6           **MR. VILLAZOR:** The government would move Government  
7   Exhibit 308 into evidence.

8           **THE COURT:** 308, admitted.

9           (Trial Exhibit 308 received in evidence)

10   **BY MR. VILLAZOR:**

11   **Q**   Agent Flores, could you put Mr. Hoang's cellular telephone  
12   onto the board? Which would be (415)786-4191.

13           (Request complied with by the Witness)

14   **Q**   Thank you, Agent Flores. You may resume your seat.

15           Agent Flores, what does the FBI do in a case like this,  
16   when they have cellular telephones of subjects and witnesses?

17   **A**   When we obtain telephone numbers provided by witnesses or  
18   confidential human sources, et cetera, people we interview, we  
19   -- if it is necessary, we will obtain phone data via grand  
20   jury subpoena.

21           We've also obtained phone data from court orders, using  
22   pen register devices. And if necessary, and we have reason to  
23   believe they're contacting via criminal activity, search  
24   warrant for content of text messages.

25   **Q**   You mentioned "phone data." Specifically, what kind of

1 phone data are you talking about?

2 **A** Tolls. That includes the time of the call, the date of  
3 the call, the phone numbers that are being contacted, and the  
4 time of the call.

5 **Q** So, kind of like somebody's phone bill, who they called  
6 and who they received calls from?

7 **A** Correct.

8 **Q** Was that done in this case?

9 **A** Yes.

10 **Q** Done through the various means that you explained to the  
11 jury?

12 **A** Yes.

13 **Q** Would it be fair to say that the toll record the FBI  
14 collected in this investigation was voluminous?

15 **A** A lot. Yes.

16 **Q** Okay. Does the FBI have a mechanism to sift and sort  
17 through such data?

18 **A** Yes.

19 **Q** What is that called?

20 **A** We have an application called "telephone aps," "telaps."  
21 It is an application that allows us to sort through and query  
22 data, that telephone data. And we can put in date ranges,  
23 telephone numbers, time ranges, and query information that we  
24 need specific to incidents or specific to just a range of  
25 time.

1 Q So the FBI collected, in this case, all the phone data and  
2 dumped it into this telaps program?

3 A Yes.

4 Q And you are able to -- the FBI is able to sort through  
5 targeted queries?

6 A Yes.

7 Q So, for example, did the FBI do any targeted inquiries as  
8 to Ian Furminger's telephone number?

9 A Yes.

10 Q Okay. So, for example, did they look for all the text  
11 messages between Ian Furminger and Sergio Sanchez between  
12 February 19, 2009, and November 13, 2009?

13 A Yes.

14 Q Those were text messages?

15 A Text messages.

16 Q Were there about 2,400 text messages back and forth  
17 between Mr. Furminger and Mr. Sanchez?

18 A Approximately, yes.

19 Q And did they look for any contact between Mr. Furminger  
20 and the phone number associated with Cesar Hernandez?

21 A Yes.

22 Q Did they find any contact, direct contact between  
23 Mr. Furminger and Mr. Hernandez?

24 A I do not recall contact.

25 Q Did they look for any communication between Mr. Furminger

1 and Ms. Kelsey Stewart, who testified earlier this trial?

2 **A** Yes, we looked.

3 **Q** Was there any contact that the FBI could find?

4 **A** No.

5 **Q** How about Mr. Robles? Did the FBI search the phone number  
6 associated with Mr. Robles on this paper exhibit, with contact  
7 with Mr. Hernandez?

8 **A** Yes.

9 **Q** Was it about 60?

10 **A** With Mr. Hernandez?

11 **Q** Yes. Between Mr. Robles and Mr. Hernandez, was it about  
12 60 between February 19, 2009 --

13 **A** With Cesar Hernandez, approximately 60, yes.

14 (Reporter interruption)

15 **BY MR. VILLAZOR:**

16 **Q** And, let me be clear: The date range was about February,  
17 2009, to about November, 2012.

18 **A** Okay.

19 **Q** And that was between the number associated with  
20 Mr. Robles, that 925 number --

21 **A** Yes.

22 **Q** -- and the number that's associated with Mr. Hernandez  
23 that's identified on that piece of paper (Indicating)?

24 **A** Correct.

25 **Q** Did the FBI also look for communication between Mr. Robles

1 and Mr. Sanchez, Sergio Sanchez?

2 **A** Yes.

3 **Q** And did they find about 1,300, give or take, different  
4 communications between Mr. Robles and Mr. Sanchez?

5 **A** Yes.

6 **Q** Did they also look for contact between Mr. Robles and  
7 Ms. Stewart, Kelsey Stewart?

8 **A** Yes.

9 **Q** And they found none?

10 **A** We found none, yes.

11 **Q** And the FBI did other targeted inquiries that we are about  
12 to talk about, later.

13 **A** Correct.

14 **MR. VILLAZOR:** Your Honor, I neglected to read one  
15 part of the wireless carrier records stipulation (As read):

16 "No. 2. The writings, signals and sounds to and from  
17 their personal cellular telephones are transmitted by  
18 means of wire communication in interstate commerce."

19 And that's referencing the three telephone numbers I  
20 associated with the -- the two Defendants and Mr. Vargas.

21 **THE COURT:** Okay.

22 **BY MR. VILLAZOR:**

23 **Q** Agent Flores, before we talk about those other targeted  
24 searches through telaps, I want to talk about your part in  
25 this investigation. Okay?

1     **A**    Okay.

2     **Q**    As part of the investigation, did you testify before the  
3    grand jury leading up to this case?

4     **A**    I did.

5     **Q**    And did you testify several times?

6     **A**    Yes.

7     **Q**    Did you have -- did you make a mistake in testifying  
8    before that -- one of the grand juries?

9     **A**    I did.

10    **Q**    Can you explain to the jury, what was that mistake?

11    **A**    In one of my testimonies before the grand jury, we had  
12    sent a lead to our Quantico division to analyze the plastic  
13    wrapping that you heard talked about before, that had  
14    contained the marijuana from UPS.

15    **Q**    And Agent Flores, if I could stop you there, we're talking  
16    about two different sets of plastic wrapping; correct?

17           One from Boone, Iowa?

18    **A**    Correct.

19    **Q**    And one was from Barrington, Illinois?

20    **A**    Yes.

21    **Q**    And then, the FBI sent that to Quantico?

22    **A**    We did. We sent the plastic wrapping that had been in  
23    Boone, Iowa, had made its way to Boone, Iowa. We had also  
24    sent the plastic wrapping that had made its way to Barrington,  
25    Illinois for analysis -- for fingerprint analysis, for

1 whatever evidentiary value we could obtain from that analysis  
2 at the laboratory division.

3 We received a report back.

4 In resetting a second lead for additional analysis, we had  
5 telephone communication with the lab, and miscommunicated and  
6 misunderstood what the lab was telling us.

7 So, I had testified before the grand jury that the  
8 packaging from Boone, Iowa, and the packaging from Barrington,  
9 Iowa (sic), had actually been of the same sheet of paper -- or  
10 sheet of plastic, I should say.

11 When we, months down the road, figured out that it was  
12 incorrect -- actually, very recently -- we went before the  
13 grand jury again and corrected that. And, what we had found  
14 was it was two pieces of the Barrington wrapping that had been  
15 of the same sheet.

16 **Q** So, Agent Flores, if I could go over that one short time,  
17 when you testified before the grand jury the first time, you  
18 thought the Boone, Iowa, plastic wrapping was at one time  
19 attached to the Barrington, Illinois, wrapping (Indicating)?

20 **A** Correct.

21 **Q** And when you testified to that in the grand jury, did you  
22 know that that was incorrect?

23 **A** I did not know that was incorrect.

24 **Q** When you learned that was incorrect, what did you do?

25 **A** When we learned it was incorrect, then we went before the



1 grand jury and corrected it on the record.

2 **Q** And when you say "we," specifically who are you talking  
3 about?

4 **A** Myself.

5 **Q** You went before the grand jury.

6 **A** I did.

7 **Q** And you explained what you just explained to this jury.

8 **A** I did.

9 **Q** Agent Flores, I'm going to hand you the incident report  
10 binder (Indicating), that's been used in this trial.

11 And essentially, is that a compilation of the incident  
12 reports that the FBI has developed evidence for?

13 **A** Yes.

14 **MR. VILLAZOR:** Your Honor, again, I'm going to go  
15 back to the stipulation (As read):

16 "SFPD Records

17 "1. The SFPD Reports Management Section maintains an  
18 archive of SFPD records, including arrest reports,  
19 incident reports and search warrants. Each case is  
20 assigned a nine-digit report number.

21 "2. Pursuant to SFPD policy, all felony arrest  
22 reports are faxed from the police station to the  
23 appropriate SFPD department. The facsimile is  
24 transmitted by means of wire communications in  
25 interstate commerce."

1 **BY MR. VILLAZOR:**

2 **Q** Agent Flores, if you could turn to Tab 5.

3 (Request complied with by the Witness)

4 **Q** Past the picture, to Exhibit 247.

5 (Request complied with by the Witness)

6 **A** Got it.

7 **Q** Are you there?

8 **A** I am.

9 **Q** What is the date of that incident?

10 **A** May 25th, 2009.

11 **MR. VILLAZOR:** Ms. Lane, if you could pull up  
12 Government Exhibit 310.

13 (Document displayed)

14 **MR. VILLAZOR:** And if you could show the middle, the  
15 middle e-mail.

16 (Document displayed)

17 **BY MR. VILLAZOR:**

18 **Q** Agent Flores, do you see that?

19 **A** I do.

20 **Q** What's the date of that email?

21 **A** Tuesday, June 21, 2009.

22 **Q** Agent Flores, let me show you what's been marked as  
23 Government Exhibit 311.

24 (Document taken off display)

25 (Witness examines document)

1 Q Do you recognize that?

2 A I do.

3 Q Is that one of these targeted search queries of telaps?

4 A It is.

5 MR. VILLAZOR: Your Honor, the government would move  
6 Government Exhibit 311 into evidence.

7 THE COURT: Admitted.

8 (Trial Exhibit 311 received in evidence)

9 (Document displayed)

10 MR. VILLAZOR: Your Honor, it is a spreadsheet. I  
11 have hard copies for the jury. If I could pass this  
12 (Indicating) out to the jury?

13 THE COURT: Okay.

14 MR. VILLAZOR: Thank you.

15 (Copies of document handed out to members of the jury)

16 THE COURT: I actually think this has been admitted  
17 already.

18 MR. VILLAZOR: I think it was subject to a motion to  
19 strike. This is the foundation we lay.

20 THE COURT: Oh, all right.

21 (Document displayed)

22 BY MR. VILLAZOR:

23 Q And, as the Judge correctly pointed out, Agent Flores,  
24 this was shown earlier to the jury?

25 A Correct.

1 Q Could you just explain what the telaps had produced here?

2 A We did a query, date range search from January 1, 2008, to  
3 December 24, 2011, of the telephone number known to be used by  
4 Edmond Robles, (925)336-6709, and the telephone number known  
5 to be used by Mr. Hoang, (415)786-4191.

6 And these were the telephone calls we found in our  
7 database.

8 Q How many phone calls?

9 A Four telephone calls on June 2nd.

10 (Document taken off display)

11 Q Agent Flores, if I could ask you to turn to Tab 9 of the  
12 binder.

13 (Request complied with by the Witness)

14 Q It is a picture. Do you recognize that?

15 A I do.

16 Q What is that?

17 A This is a picture of an SRO located on Broadway in the  
18 North Beach area in San Francisco.

19 Q I'm showing you what's been marked as Government's Exhibit  
20 299. Do you recognize that?

21 (Witness examines document)

22 A I do.

23 Q Is this another telaps targeted query?

24 A Yes.

25 MR. VILLAZOR: Your Honor, the government moves

1 Government's Exhibit 299 into evidence.

2 **THE COURT:** 299, admitted.

3 (Trial Exhibit 299 received in evidence)

4 **MR. VILLAZOR:** Your Honor, if I could again pass out  
5 hard copies to the jury?

6 (Copies of document handed out to members of the jury)

7 **MR. VILLAZOR:** Ms. Espinoza, if I can have -- thank  
8 you.

9 (Document displayed)

10 **BY MR. VILLAZOR:**

11 **Q** Agent Flores, what is Government's Exhibit 299?

12 **A** This is a -- another telaps query for telephone calls  
13 between Mr. Hernandez' known telephone number at the time and  
14 Mr. Robles' telephone number.

15 **Q** Okay. And focusing on --

16 **A** Excuse me. And Mr. Vargas' telephone number as well.

17 **Q** Focusing on the first four entries, do you see the first  
18 entry?

19 **A** I do.

20 **Q** Can you explain what the first entry signifies?

21 **A** On November 12, 2009, there's a text message from  
22 Mr. Hernandez to Mr. Robles at 6:57 a.m.

23 **Q** The second entry?

24 **A** There is a telephone call from Mr. Robles to Mr. Hernandez  
25 at 7:23 a.m.

1 Q For approximately how long?

2 A Twenty-six seconds.

3 Q The third entry?

4 A A telephone call from Mr. Robles to Mr. Hernandez at  
5 7:55 a.m. for 25 seconds.

6 Q And the fourth entry?

7 A A telephone call from Mr. Robles to Mr. Hernandez, at 8:05  
8 a.m. for 32 seconds.

9 Q Agent Flores, referencing that first text message, does  
10 the FBI have the actual text message?

11 A We do not.

12 Q Why is that?

13 A Because in order to obtain content from text messages, we  
14 have to have a search warrant. And we have -- in most cases  
15 with the telephone companies, we have to preserve the data  
16 with that telephone company. Essentially we have to tell the  
17 them to: Save the data for us, and we'll come back and provide  
18 you a warrant to obtain the data at a future date.

19 Q As part of this investigation, did the FBI perform search  
20 warrants for text messages?

21 A We did.

22 Q And, you were here in trial when Mr. Sanchez, Sergio  
23 Sanchez, testified?

24 A Yes.

25 Q Were those some of the text messages that the FBI

1 obtained?

2 **A** Yes.

3 **Q** Were there hundreds and hundreds of text messages the FBI  
4 obtained?

5 **A** Yes.

6 **Q** Was there a limiting time frame of those text messages?

7 **A** For Mr. Sanchez it was approximately June until the --  
8 June, 2011, until about the end of the year. I believe it was  
9 November, 2011.

10 **Q** By the way, were all these text messages that the FBI  
11 obtained, were they all produced to the defense in discovery?

12 **A** Yes.

13 **Q** And all the toll data that was obtained by the FBI, was  
14 that also produced to the defense in discovery?

15 **A** Yes.

16 (Document taken off display)

17 **Q** Agent Flores, I'm going to show you what's been marked as  
18 Government Exhibit 300.

19 (Witness examines document)

20 **Q** Can you explain to members of the jury what Government's  
21 Exhibit 300 is?

22 **A** This is also a query from telaps for contacts between  
23 Mr. Hernandez, Mr. Robles, and Mr. Vargas. The time-frame  
24 search was February 1, 2009 to February 28, 2010.

25 (Document handed up to the Court)

1 **A** And this time we did a time-range search of 2100 to  
2 midnight.

3 **THE COURT:** Admitted.

4 **THE WITNESS:** Essentially, 9:00 p.m. to midnight.

5 **THE COURT:** Admitted. 300 is admitted.

6 (Trial Exhibit 300 received in evidence)

7 **MR. VILLAZOR:** Just a moment, Agent Flores.

8 (Copies of document handed out to members of the jury)

9 (Document displayed)

10 **BY MR. VILLAZOR:**

11 **Q** Agent Flores, could you explain again to the jury what  
12 Government's Exhibit 300 is?

13 **A** This is a query from telephone aps. And what we're  
14 querying is contacts between Mr. Hernandez, Mr. Robles,  
15 Mr. Vargas. And we're looking at the time -- the date range  
16 of February 1, 2009, to February 28, 2010. And we're  
17 specifically looking for a time-range search of late at night.  
18 And the query was 9:00 p.m. to midnight.

19 **Q** Can you explain the significance of querying 9:00 p.m. to  
20 midnight?

21 **A** Mr. Hernandez told us that he did not have contacts with  
22 the SFPD officers late at night except for on a very few  
23 occasions, and one in particular. He believed it occurred  
24 very late at night. And so we looked for those contacts.

25 **Q** Agent Flores, if I could turn your attention to the first



1 entry on Government's Exhibit 300. Can you explain to the  
2 jury what that represents?

3 **A** That is on November 13, 2009, at 23:07. There's a call  
4 for 14 seconds from Mr. Robles' telephone number to  
5 Mr. Hernandez' telephone number.

6 **Q** For the rest of that evening, are there additional  
7 communications on November 13, 2009?

8 **A** Yes.

9 **Q** And who are they between?

10 **A** They are between Mr. Robles and Mr. Hernandez.

11 **Q** And, are there any -- is there any other indication that  
12 Mr. Hernandez and Mr. Robles had any communication this late  
13 at night from the date range specified in this exhibit?

14 **A** There was another time in June -- excuse me, January 29,  
15 2010, where there was contacts at 9:00 p.m., approximately  
16 9:00 p.m. at night.

17 **Q** And that is identified with the target name of Reynaldo  
18 Camargo Vargas?

19 **A** Yes.

20 (Document taken off display)

21 **Q** Agent Flores, if you could turn to Tab 10. Government's  
22 Exhibit 254, the incident report after the pictures.

23 Let me know when you are there.

24 **A** I'm here.

25 **Q** Tab 10.

1     **A**    I have it.

2                 **MR. VILLAZOR:**  Ms. Lane, if you could pull up Exhibit  
3     254.

4                 (Document displayed)

5     **BY MR. VILLAZOR:**

6     **Q**    And at the top left box, Agent Flores, what is the date of  
7     this incident report?

8     **A**    November 19, 2009.

9     **Q**    Agent Flores, I'm showing you what's been marked as  
10    Government's Exhibit 282.

11                (Document taken off display)

12                (Witness examines document)

13    **Q**    Can you identify that for the jury?

14                (Document handed up to the Court)

15    **A**    This is another query from telaps for contacts between  
16    Mr. Robles, Mr. Vargas and Mr. Furminger, on November 19,  
17    2009.

18                **THE COURT:**  282 admitted.

19                (Trial Exhibit 282 received in evidence)

20                (Copies of document handed out to members of the jury)

21                **MR. VILLAZOR:**  Ms. Espinoza, if I could have the --

22                (Document displayed)

23    **BY MR. VILLAZOR:**

24    **Q**    Agent Flores, could you again explain to the jury what  
25    Government's Exhibit 282 is?

1   **A**   This is a query from our telephone application database,  
2       which, we're looking for contacts between Mr. Robles,  
3       Mr. Vargas, Mr. Furminger, on November 19, 2009.

4   **Q**   And is it only for November 19, 2009?

5   **A**   Yes.

6   **Q**   And is it only for the numbers that are identified between  
7       Mr. Robles, Mr. Furminger and Mr. Vargas on the writing pad?

8   **A**   Yes.

9   **Q**   And Agent Flores, if you could at least start with the  
10      first one I've highlighted, could you explain the significance  
11      of that first entry?

12   **A**   That, that is a text message at 6:27 a.m. And that is  
13      from Ian Furminger to Rey Vargas.

14   **Q**   And again, does the FBI have the actual content of that  
15      text message?

16   **A**   No, we do not.

17   **Q**   Now, jumping down about 25 or so, do you see where I've  
18      highlighted 11/19, 15:48?

19   **A**   Yes.

20   **Q**   So there's about twenty or more contacts between  
21      Mr. Furminger, Mr. Robles, and Mr. Vargas?

22   **A**   Yes.

23   **Q**   And that's military time, 15:48?

24   **A**   Correct.

25   **Q**   What is that in normal time?

1     **A**    3:48 p.m.

2     **Q**    And if I could switch back to Government's Exhibit --  
3     actually, I just have it right here.

4           (Document displayed)

5     **Q**    Government's Exhibit 254, what is the occurrence from  
6     Date/Time, up at the top left box?

7     **A**    The time is 15:55.

8     **Q**    Which is?

9     **A**    3:55 p.m.

10           (Document taken off display)

11           (Document displayed)

12     **Q**    Agent Flores, going down about five entries from that last  
13     15:48 entry, do you see that one, 16:24?

14     **A**    Yes.

15     **Q**    What does the 16:24 entry -- let me see if I could -- What  
16     does the 16:24 entry show?

17     **A**    Scroll over --

18           (Document displayed)

19     **A**    This is a telephone call from Ed Robles to Ian Furminger.

20     **Q**    And then the next one, that I've shown here at 17:01?

21     **A**    That is a telephone call at 17:01, from Ian Furminger to  
22     Rey Vargas.

23     **Q**    And what time is that?

24     **A**    17:01, which is 5:01 p.m.

25     **Q**    All right.

1 (Document taken off display)

2 **Q** Going back to Government Exhibit 254.

3 (Document displayed)

4 **Q** The incident report. Do you see where there is the  
5 "OFFICIAL DECLARATION" that I'm pointing to?

6 **A** Yes.

7 **Q** And the reporting officer is who?

8 **A** Officer Vargas.

9 **Q** And going across four boxes, what's the date that he  
10 signed it (Indicating)?

11 **A** November 19, 2009. At 17:35:04.

12 **Q** Which is what time?

13 **A** 5:35 p.m.

14 (Item handed down)

15 **MR. VILLAZOR:** Just a moment.

16 (Off-the-Record discussion between counsel)

17 **BY MR. VILLAZOR:**

18 (Document displayed)

19 **BY MR. VILLAZOR:**

20 **Q** Agent Flores, I neglected to point out. Again, the  
21 reporting officer is who?

22 **A** Reynaldo Vargas.

23 **Q** And there's a reviewing officer?

24 **A** Yes.

25 **Q** Is there a star number that you can make out?

1 **A** That star number looks like 1297.

2 (Document taken off display)

3 **Q** And are you familiar with whose number Star 1297 is?

4 **A** Yes.

5 **Q** Who is that?

6 **A** Ian Furminger.

7 (Off-the-Record discussion between counsel)

8 **THE COURT:** Can we mark the sheet on the board there  
9 as Exhibit next in order?

10 **MR. HEMANN:** Yes, Your Honor.

11 **THE COURT:** What exhibit number would that be,  
12 Barbara?

13 **MR. HEMANN:** 321, Your Honor.

14 **THE COURT:** Is that 321? Okay. The sheet of paper  
15 that's been shown the jury is 321.

16 **MR. HEMANN:** Yes, Your Honor.

17 **THE COURT:** And it is admitted in evidence.

18 (Trial Exhibit 321 received in evidence)

19 **BY MR. VILLAZOR:**

20 **Q** Agent Flores, I have just one more thing to cover with  
21 you. Government Exhibit 298, this is the Pinarello Dogma?

22 **A** Yes.

23 **Q** When did the FBI learn of the existence of the Pinarello  
24 Dogma that's in evidence?

25 **A** When Reynaldo Vargas interviewed with us, and provided us

1 details on that bicycle.

2 **Q** When was that interview?

3 **A** In October -- late October of this year. And he provided  
4 it to us, I believe it was November of 12th of this year.

5 **Q** Physically provided it?

6 **A** Physically brought it to us, this --

7 **Q** Prior to interviewing Mr. Vargas, did the FBI know  
8 anything about this Pinarello Dogma?

9 **A** We did not.

10 **Q** Did the FBI know anything about a Craigslist posting of  
11 this Pinarello Dogma?

12 **A** We did not.

13 **Q** Did you know of Mr. Tuan Hoang who had sold the Pinarello  
14 Dogma?

15 **A** We did not.

16 (Off-the-Record discussion between counsel)

17 **BY MR. VILLAZOR:**

18 **Q** Agent Flores, you talked about search warrants.

19 **A** Yes.

20 **Q** Search warrants were conducted in this investigation?

21 **A** Yes.

22 **Q** And some of those search warrants were -- excuse me, some  
23 of those text messages that were obtained through search  
24 warrants were shown through Mr. Sergio Sanchez.

25 Correct?

1 **A** Yes.

2 **Q** Are there other text messages that the FBI has?

3 **A** Yes.

4 **Q** I will show you what's been marked as a compilation. 313.

5 **THE COURT:** 313.

6 (Witness examines document)

7 **BY MR. VILLAZOR:**

8 **Q** Is that a compilation of text messages that the FBI --  
9 pertinent text messages the FBI has obtained?

10 (Witness examines document)

11 **A** Yes.

12 **MR. VILLAZOR:** Your Honor, the government would move  
13 to admit Government Exhibit 313. And, it was obviously  
14 subject to the Court's prior ruling.

15 **THE COURT:** Okay. Admitted.

16 (Trial Exhibit 313 received in evidence)

17 **MR. VILLAZOR:** Ms. Espinoza, if we could have the --  
18 thank you.

19 (Document displayed)

20 **BY MR. VILLAZOR:**

21 **Q** Okay. Just, to orient ourselves, Agent Flores, if you  
22 would turn to Tab 12. And you will see here, this is the  
23 seventh picture, of Government's Exhibit 277.

24 Do you see that?

25 **A** I do.



1 Q Is that where Sergio Sanchez used to work?

2 A Yes.

3 Q And, showing you another page.

4 (Document displayed)

5 Q Page 6 of Government Exhibit 277.

6 (Witness examines document)

7 (Document displayed)

8 Q Is that also 20th Street, where Mr. Sanchez used to work?

9 A This looks like the vicinity of 20th Street, yes.

10 (Document displayed)

11 Q I'm showing you a series of text messages, dated  
12 February 7, 2012. Do you have that in your --

13 A I do.

14 (Document displayed)

15 Q And just for a frame of reference, yellow is  
16 Mr. Furminger's phone number?

17 A Yes.

18 Q And the phone number that's in this exhibit, "9253366709,"  
19 whose number is that?

20 A That is Ed Robles' telephone number.

21 Q And for purposes of displaying this to the jury, did you  
22 -- did we put Mr. Furminger's text message in a yellow border,  
23 and Mr. Furminger -- Mr. Robles's in a pink border?

24 A Yes.

25 Q All right.

1 (Document displayed)

2 **Q** And if you could -- I will read Mr. Robles, if you could  
3 read Mr. Furminger's text messages.

4 **A** Okay.

5 **Q** (As read)

6 "Do you have a portable generator I could borrow?"

7 **A** (As read)

8 "No! Keep meaning to buy one but the good ones  
9 expensive! The ones on Craigslist are burned out!  
10 What do you need it for? Rent a bad ass one at  
11 Cresco!"

12 **Q** "Pitching machine...looking for a smaller Honda ER?"

13 **A** "Oh, yeah you need one for that but a basic one!  
14 Get the entry level Honda."

15 **Q** Moving on.

16 "They're hella money... Sergio..."

17 Blank.

18 **A** "Not that bad for a small one! Like 600."

19 **Q** "Fuck that..."

20 **A** "Mother ducker I asked if you want to get coffee!"

21 **Q** "At home... waiting for painter for other house.  
22 Can't do it right now."

23 Agent Flores, I'm showing you a series of text messages  
24 dated February 10, 2012.

25 (Document displayed)

1 Q Again, is Mr. Furminger's phone number highlighted in  
2 yellow?

3 A Yes.

4 Q And the other number is an unidentified person.

5 A Yes.

6 (Document displayed)

7 Q If you could read the yellow-bordered text message which  
8 is Mr. Furminger's.

9 A (As read)

10 "It's official! I'm cashing in some of my 457,  
11 Fucking sucks!"

12 Q "I'll check it maybe six...at demo."

13 A "I will put the check in the mail and it will be  
14 good next week! I was denied taking money out of  
15 retirement as it didn't qualify as a hardship!"

16 Q Showing you another text message, dated February 11, 2012.  
17 (Document displayed)

18 Q If you could read Mr. Furminger's text messages.

19 A (As read)

20 "What are your days off? You staying swings?  
21 Having Emma on all my days off from here on out! No  
22 more allowing Lucie to get extra days. That will  
23 bring support back to reasonable amount!"

24 Q "Staying swings, hopefully W06 still."

25 A "I have court against the ex March 13! Her game is

FLORES - DIRECT EXAMINATION / VILLAZOR

1 about to get rained out!"

2 (Document displayed)

3 **Q** "Yuck."

4 **A** "Five and a half more years and she is going to have  
5 a rude awakening! Then I give money straight to  
6 Emma when she is in college! I get paid an extra  
7 thousand a month to work the overnight starting at  
8 9:00 p.m. May have to do it! Shift choices are  
9 every 6 months so if I gotta take it (sic) I gotta  
10 do it! Plus I got denied a take (sic) from 457 plan  
11 because they don't consider it a hardship!  
12 Unfucking believable! One way or another I will  
13 survive! Been through worse!"

14 **Q** Showing you another text message from Mr. Furminger, dated  
15 March 3 -- excuse me, dated March 22, 2012.

16 (Document displayed)

17 **A** "Stilt fighting Lucie in court. Big drain emotionally and  
18 financially. Her attorney making her out to be S struggling  
19 teacher."

20 **Q** Finally, showing you a series of text messages dated  
21 May 16, 2012.

22 (Document displayed)

23 **Q** And again, 4153094914 is Mr. Furminger's?

24 **A** Yes.

25 **Q** And this 9253366709, is that Mr. Robles's?

1 **A** Yes.

2 **Q** And for purposes of presenting to this jury, did you put  
3 -- did we put the -- Mr. Furminger's text in a yellow border,  
4 and Mr. Robles' in a pink border?

5 **A** Yes.

6 **Q** And if you would read Mr. Furminger's, and I'll read  
7 Mr. Robles's.

8 **A** (As read)

9 "Creapin."

10 **Q** "Where U at?"

11 **A** "Crib, getting my tan on like a straight playa!"

12 **Q** "LOL..."

13 Blank.

14 **A** "Fuck that shit bro, I am looking like a movie  
15 mother fucking star and shit! Steph is trippin off  
16 my new pimp style when we roll out."

17 **Q** "Dude. You got issues."

18 **A** "Hell yeah I do, in the backyard, in the sun, half  
19 naked drinking cold ass white wine listening to  
20 Luther on my system I got from Serg!"

21 **MR. VILLAZOR:** No further questions, Your Honor.

22 **THE COURT:** Cross?

23 (Off-the-Record discussion between counsel)

24

25

**CROSS EXAMINATION**

**BY MR. PASSAGLIA:**

**Q** Good morning, Agent Flores.

**A** Hi, good morning.

**Q** I'm going to ask you a few questions about the phone data.

All the questions I ask are in the time frame referenced in the indictment, unless I say so. Okay?

**A** Okay.

**THE CLERK:** Counsel, would you speak into the mic?

**MR. PASSAGLIA:** Sure.

**BY MR. PASSAGLIA:**

**Q** Approximately how many text messages were there between Sergeant Furminger and the number associated with Sergio Sanchez?

**A** Uh, I would need my notes to --

**Q** Sure.

**A** -- provide that detail to you.

(Off-the-Record discussion between counsel)

**THE WITNESS:** Off the top of my head, I believe it was approximately 2,400; if you're asking between Sergeant Furminger and Sergio Sanchez?

**BY MR. PASSAGLIA:**

**Q** That's correct. Thank you; that's fine.

**A** Approximately.

**Q** I'm going to have a few other questions along the same

1 lines, if you would prefer your notes.

2 **A** Probably.

3 **Q** Okay.

4 **THE COURT:** Do you have your notes down there?

5 **THE WITNESS:** I handed them to one of the  
6 prosecutors. It's --

7 **MR. VILLAZOR:** I have them, Your Honor.

8 **THE COURT:** Why don't you just give them to her. And  
9 let the witness go through them, if she needs them.

10 (Request complied with by Mr. Villazor)

11 **THE COURT:** There we go. Okay. Thank you.

12 (Witness examines document)

13 **THE COURT:** And your question is? Would you restate  
14 your question, please.

15 **MR. PASSAGLIA:** I will.

16 **BY MR. PASSAGLIA:**

17 **Q** The question was: Approximately how many text messages  
18 were there between Sergeant Furminger and a number associated  
19 with Sergio Sanchez?

20 **A** There were approximately 2,400 text messages.

21 **Q** 2,400. Same question: Approximately how many text  
22 messages -- this time and/or phone calls -- between a number  
23 associated with Kelsey Stewart and Rey Vargas?

24 **A** Approximately 70, or more. Seventy-four.

25 **Q** Okay. And I believe you previously stated that the same

1 question between Kelsey Stewart and Sergeant Furminger was  
2 zero.

3 Is that correct?

4 **A** Zero.

5 **Q** Okay. Now, I don't see it on the board, but is there a  
6 number associated with Daisy Bram/Jayne Walsh?

7 **A** There are, yes.

8 **Q** And approximately how many calls/text messages between  
9 that phone number and Rey Vargas?

10 **A** Twenty-three.

11 **Q** And that same question: Approximately how many, between  
12 the number associated with Ms. Bram and Mr. Walsh and Sergeant  
13 Furminger?

14 **A** Zero.

15 **Q** And, I believe you said text messages and phone calls  
16 between Cesar Hernandez and Sergeant Furminger in that time  
17 frame was zero as well.

18 Is that correct?

19 **A** Correct.

20 **Q** In your investigation, did you learn how many officers  
21 Sergeant Furminger supervised?

22 **A** I heard that he supervised many. I don't have an exact  
23 number for you.

24 **Q** Do you have an approximate?

25 **A** I don't.



1 Q Okay. So, was there any investigation designed to  
2 determine how many text messages Sergeant Furminger exchanged  
3 with other officers besides Officer Robles and Officer Vargas?

4 A No.

5 Q So, there's no way to know if he texted or called more or  
6 less with other officers that he supervised, compared with  
7 Vargas and Robles; is that correct?

8 A No; we didn't look at that.

9 Q You just testified on direct about a few text messages. I  
10 just had a couple of questions about the names.

11 Who was Stephanie?

12 A Stephanie --

13 Q It was referred in a text message from Sergeant Furminger  
14 and I believe Mister -- Officer Robles. Do you --

15 A I believe that to be Stephanie Furminger, his wife.

16 Q And Lucie, I believe that was also referenced. Do you  
17 know who Lucie is?

18 A I believe that to be a woman who he has a child with. I  
19 believe that's Lucie Bradshaw. I can't be 100 percent  
20 certain.

21 Q Understood. And the name "Emma," do you --

22 A I believe Emma is his daughter.

23 Q Okay. Thank you.

24 MR. PASSAGLIA: No further questions.

25 THE COURT: Ms. Caffese?

1                   **MS. CAFFESE:** Thank you, Your Honor.

2                                   **CROSS EXAMINATION**

3                   **BY MS. CAFFESE:**

4           **Q**    Good morning, Agent. Just a few questions.

5           **A**    Good morning.

6           **Q**    I think, anyway.

7                   I just wanted to clarify a few things here. I believe you  
8           said during direct examination that the last communication  
9           between Cesar Hernandez and Officer Robles was in 2012.

10          **A**    Um, I'm sorry; say that again?

11          **Q**    Well, let me ask you: When was the last communication  
12          that occurred between Cesar Hernandez and Officer Robles?

13          **A**    I don't know, off the top of my head.

14          **Q**    All right. I have --

15                   (Off-the-Record discussion between counsel)

16                   **MS. CAFFESE:** I would like to mark what I'm about to  
17          show Agent Flores.

18                   **THE COURT:** Exhibit next in order for the defense.

19                   **THE CLERK:** 364 (sic).

20                   (Trial Exhibit later identified as 365 marked for  
21          identification)

22                   **BY MS. CAFFESE:**

23          **Q**    This is 364 (sic), agent. Just, if you could look at  
24          it -- I believe you testified to most of that, but just look  
25          at that to make sure you are familiar with it.

1 (Witness examines document)

2 **A** Okay.

3 **Q** All right. What is it, ma'am?

4 **A** This looks like a query from our telephone applications.  
5 It appears to have been a query between a telephone number  
6 associated with Mr. Hernandez and a telephone number  
7 associated with Mr. Robles.

8 **Q** Can I take that back?

9 **A** Sure.

10 **Q** And the last communication on this exhibit, on this  
11 inquiry between Officer Robles and Cesar Hernandez is  
12 November 16, 2009. Am I correct?

13 **A** For that query, yes, ma'am.

14 **Q** Yes.

15 **THE COURT:** Okay. Admitted.

16 **MS. CAFFESE:** Thank you. Yes.

17 (Trial Exhibit later identified as 365 received in  
18 evidence)

19 **THE CLERK:** Do you have one for the Court?

20 **MS. CAFFESE:** Yes.

21 **THE COURT:** Yeah. 364 (sic), admitted.

22 **MS. CAFFESE:** Thank you.

23 **BY MS. CAFFESE:**

24 **Q** Now, were there any text messages that you obtained  
25 between Officer Robles and Cesar Hernandez?

1     **A**    No, ma'am.

2     **Q**    Did you check the number that belonged to Cesar Hernandez,  
3       and determine whether or not there were any communications  
4       with other officers aside from Sergeant Furminger and Rey  
5       Vargas and Officer Robles?

6     **A**    I don't know -- I don't recall if we did or not. I'm sure  
7       we did during the early stages of the investigation, but I  
8       don't recall those results.

9     **Q**    And, that's because Mr. Hernandez actually worked as a CI  
10       with other officers at Mission Station. Am I correct?

11    **A**    He provided information to other officers. Specifically,  
12       the officers he was handled by.

13    **Q**    All right. Other than Officer Robles, for example?

14    **A**    What I meant, "handled," that was his handler. It was  
15       Officer Robles, and then Officer Vargas.

16    **Q**    Well, there were other officers aside from Officer Robles  
17       and Officer Vargas that worked with Cesar Hernandez, correct?

18           **MR. VILLAZOR:** Objection; foundation.

19           **THE COURT:** Sustained.

20           **MS. CAFFESE:** All right. Very well.

21           **THE COURT:** By the way, the exhibit that I  
22       erroneously referred to as 364 is actually 365.

23           **MS. CAFFESE:** Thank you, Your Honor.

24    **BY MS. CAFFESE:**

25    **Q**    All right. Did you ever determine whether or not 519

1 Broadway actually exists?

2 **A** We went there recently. And, it is 517 Broadway. We have  
3 a 302 to that effect as well. Just, in referring to it, we  
4 started referring to it as "519."

5 **Q** All right. But 519 actually doesn't exist. Correct?

6 **A** No, ma'am. 517 exists. And we have that documented in  
7 302s.

8 **Q** All right. Very well.

9 Now, the FBI, my understanding, obtained certain -- the  
10 Craiglists (sic) -- the Craiglistings (sic) in the last few  
11 days. Am I correct? The Craiglistings for Mr. Hoang?

12 **A** We obtained the postings from Craigslist in the last week  
13 or so, give or take.

14 **Q** All right. And within the last week or so, you obtained  
15 certain communications between Mr. Hoang and Officer Robles.  
16 Is that right?

17 **A** Yes.

18 **Q** And the -- the email exchange that you received -- or I  
19 should say that you turned over in discovery -- was the  
20 communications from May 17th to June 2nd, 2009. Initially.

21 Correct?

22 **A** Initially, I believe the first communication was a little  
23 earlier in May. If I recall, it was May 7th. I don't recall,  
24 unless I have it in front of me.

25 **Q** My question is, is that you didn't receive -- you actually

1 did not receive the May 7th communication that Officer Robles  
2 made to Mr. Hoang until I forwarded you those emails. Or, not  
3 you, specifically, but to counsel for the government here.

4 Is that correct?

5 **A** We received the communication you provided, and then we  
6 had also -- Mr. Hoang had provided communication that he had  
7 with Mr. Robles to Special Agent Folger as well.

8 **Q** But, I'm specifically asking you this, Agent. And that is  
9 that the communication, the emails that you received within  
10 the last week initially did not include the May 7th, 2009,  
11 communication that Officer Robles sent Mr. Hoang.

12 True statement?

13 **MR. VILLAZOR:** Objection; relevance.

14 **THE COURT:** Well, I'll allow it. Go ahead.

15 **THE WITNESS:** Special Agent Folger this weekend  
16 received communication forwarded to him by Mr. Hoang.

17 **BY MS. CAFFESE:**

18 **Q** Right. That was this weekend. Is that correct?

19 **A** Yes, ma'am.

20 **Q** And that was not included in the original communications  
21 that you disclosed to me, for example.

22 True statement?

23 **A** We disclosed to you what we had to disclose.

24 **Q** Correct. And what you initially disclosed did not include  
25 the earlier communication that predated May 20th, between

1 Officer Robles and Mr. Hoang.

2 True statement?

3 **A** Well, we disclosed to you what we had. And from  
4 November 12th until now, we collected information about that  
5 Pinarello Dogma, including email communication that was  
6 received this weekend.

7 **Q** Well, I understand that. But the May 7th communication,  
8 you became aware of it because I made you aware of it, and  
9 said: Wait, there's some earlier communication that needs to  
10 put all of this in context.

11 Correct?

12 **MR. VILLAZOR:** Objection. Asked and answered.

13 **THE COURT:** I'll allow it.

14 **THE WITNESS:** My belief, ma'am, is that Special Agent  
15 Folger received email communication from Mr. Hoang which was  
16 independent of you providing the email communication provided  
17 to you by your client.

18 **BY MS. CAFFESE:**

19 **Q** Do you know how Agent Folger received that information --

20 **THE COURT:** Well, here's the problem. Here's the  
21 problem.

22 When you introduce -- when you ask questions about when  
23 you delivered something, that also invites a further inquiry  
24 that I think invades the attorney/client privilege.

25 I don't know, but it seemed to me that -- maybe there was

1 an independent source, or maybe there wasn't. So --  
2 independent of you, or independent of your client.

3 So, I think it's sort of -- that's why we don't go into  
4 all of this discovery. And, I'm going to now sustain the  
5 objection as it being asked and answered.

6 **MS. CAFFESE:** All right.

7 **THE COURT:** And we're going to leave it at that.

8 **MS. CAFFESE:** Very well. I just have one other  
9 exhibit, Your Honor.

10 **THE COURT:** Sure.

11 **MS. CAFFESE:** And that would be the next in order.

12 **THE CLERK:** 366.

13 **MS. CAFFESE:** All right.

14 (Off-the-Record discussion between counsel)

15 **MS. CAFFESE:** Okay, this is Exhibit 366.

16 (Trial Exhibit 366 marked for identification)

17 **BY MS. CAFFESE:**

18 **Q** And, just take a look it.

19 (Witness examines document)

20 **Q** Do you recognize this exhibit, Agent?

21 **A** I do.

22 **Q** Okay. And, this exhibit reflects the contacts between  
23 Reynaldo Vargas and Kelsey Stewart. Is that correct?

24 **A** Yes, ma'am.

25 **Q** And Counsel, Mr. Passaglia, has already asked about you



1 the contacts between Kelsey Stewart and Rey Vargas.

2 But specifically, there were more than 74 -- or let me say  
3 more than 70 contacts between Vargas and Ms. Stewart from  
4 March 9, 2009, to May 16, 2009.

5 Is that correct?

6 **A** Yes.

7 **THE COURT:** Admitted.

8 **MS. CAFFESE:** Okay.

9 (Trial Exhibit 366 received in evidence)

10 **BY MS. CAFFESE:**

11 **Q** And am I correct; there are no communications between  
12 Officer Robles and Kelsey Stewart. Is that correct?

13 **A** That's correct.

14 **Q** And there are no communications between Officer Robles and  
15 Daisy Bram. Correct?

16 **A** Yes, ma'am.

17 **Q** And there are no communications between Officer Robles and  
18 Jayme Walsh. Correct?

19 **A** Correct.

20 **MS. CAFFESE:** Thank you, Agent. I have no further  
21 questions.

22 **THE COURT:** Anything further?

23 **MR. VILLAZOR:** Very quickly, Your Honor.

24 Ms. Lane, if you could put on Government Exhibit 273.

25 (Document displayed)

**REDIRECT EXAMINATION**

**BY MR. VILLAZOR:**

**Q** Agent Flores, you see Tab 9 of the incident report binder?

**A** Yes.

**Q** What does this picture show?

**A** This is a photograph of the SRO on Broadway.

**Q** And what is the address that the FBI believes is a place of offense?

**A** It is 517 Broadway.

**Q** 517 Broadway?

**A** Yes.

**MR. VILLAZOR:** No further questions.

**THE COURT:** Thank you. Anything further?

**MR. PASSAGLIA:** No.

**MR. HEMANN:** We have a number of stipulations.

**THE COURT:** Okay. Well, you are excused. You can step down.

**THE WITNESS:** Thank you.

(Witness excused)

**THE COURT:** Okay. Go ahead.

**MR. HEMANN:** Thank you, Your Honor. These are stipulations that have not yet been read into the Record, Your Honor.

I would like to read them into the Record, and they will be reflected in the exhibit the jury will receive.

1           **THE COURT:**   Okay.

2           **MR. HEMANN:**   Number one (As read):

3           "San Francisco Police Department (SFPD) is a  
4           government agency within the executive branch of the  
5           City and County of San Francisco, California.

6           "1.a. In 2009, SFPD was a grantee and beneficiary of  
7           the Public Protection Special Revenue Fund, a federal  
8           grant program, in excess of \$10,000.

9           "In 2010, SFPD was a grantee and beneficiary of the  
10          Public Protection Special Revenue Fund, a federal  
11          grant program, in excess of \$10,000."

12          (Off-the-Record discussion between counsel)

13          **MR. HEMANN:**   I'll keep reading while it warms up.

14          "SFPD has ten police stations in the County of  
15          San Francisco. Mission Station..."

16          (Document displayed)

17          **MR. HEMANN:**   (As read)

18          "...630 Valencia Street, San Francisco, covers the  
19          area east of Twin Peaks to James Lick Freeway and  
20          south of Market Street to Cesar Chavez Street.

21          "Every SFPD officer takes a sworn oath to support and  
22          defend the Constitution -- the U.S. Constitution, the  
23          Constitution, statutes, and laws of California and  
24          the code, policies and charter of the City and County  
25          of San Francisco. A sworn SFPD officer is empowered,

1 among other things, to arrest persons and seize  
2 property on behalf of City and County of  
3 San Francisco.

4 "At all times relevant to Indictment CR-14-00102-CRB,  
5 "a. Ian Furminger is a sworn SFPD police officer and  
6 an agent authorized to act on behalf of the SFPD.  
7 His SFPD star number is 1297, and he was assigned to  
8 the plainclothes unit at Mission Station from  
9 February 19, 2009, to November 28, 2009;

10 "Edmond Robles is a sworn SFPD police officer and an  
11 agent authorized to act on behalf of SFPD. His SFPD  
12 star number is 1467, and he was assigned to the  
13 plainclothes unit at Mission Statement (sic) from  
14 March 8, 2008, to January 23, 2010; and

15 "c. Reynaldo Vargas is a sworn SFPD officer and an  
16 agent authorized to act on behalf of SFPD. His SFPD  
17 star number is 979, and he was assigned to the  
18 plainclothes unit at Mission Station from February 3,  
19 2009, to May 13, 2011.

20 "The Mission Station plainclothes unit phone number  
21 is (415)255-1180."

22 (Document taken off display)

23 (Document displayed)

24 **MR. HEMANN:** (As read)

25 "As a business practice, the San Francisco Police

1 Department maintains Employment History Records for  
2 police officers. Defense Exhibit 5, a 16-page  
3 employment history for Edmond Robles, is a true and  
4 accurate copy of his scheduling and assignment  
5 history from January 1, 2008, to January 31, 2010.

6 "No. 2. Confidential Informant Payment Receipt Forms  
7 from July 29, 2010; August 20, 2010; August 25, 2010;  
8 September 9, 2010; and February 5, 2011 are true and  
9 accurate copies from SFPD informant files created and  
10 maintained pursuant to the SFPD Informant Management  
11 Manual. (Included, in part in Government's Exhibits  
12 2 and 56.

13 "No. 3. A property receipt for SFPD incident report  
14 number (090-312-655) dated March 25, 2009, is a true  
15 and accurate copy from the file for two U.P.S.  
16 shipping boxes with two plastic sealed bags  
17 containing marijuana. (See Government Exhibit 116)."

18 (Off-the-Record discussion between counsel)

19 (Document displayed)

20 **MR. HEMANN:** Under "Controlled Substances"

21 (As read):

22 "Under federal law, drugs, substances and certain  
23 chemicals used to make drugs are classified into five  
24 distinct categories or schedules. Under federal law,  
25 it is unlawful to possess or distribute drugs

1 classified as Schedule I controlled substances.

2 "a. Marijuana is a Schedule I controlled substance.

3 "B. Heroin is a Schedule II controlled substance.

4 "c. Oxycodone (OxyContin) is a Schedule II controlled  
5 substance.

6 "2. Government's Exhibit 244-C and 244-D amount to  
7 83.89 (sic) grams of marijuana.

8 "3. Government Exhibit 107-C and 107-D amount to  
9 89.14 grams of marijuana.

10 "4. Government Exhibit 108-C and 108-D amount to  
11 99.6 grams of marijuana.

12 "5. Government Exhibit 109-C and 109-D amount to  
13 98.87 grams of marijuana.

14 "6. Government's Exhibit 110-C and 110-D amount to  
15 94.6 grams of marijuana.

16 "7. Government Exhibit 112-B is 216.7 grams of  
17 marijuana.

18 "8. Government Exhibit 113-B is 246.9 grams of  
19 marijuana."

20 (Off-the-Record discussion between counsel)

21 (Document displayed)

22 **MR. HEMANN:** With regard to the Apple records, Your  
23 Honor (As read):

24 "1. Every Apple iPhone has unique identifiers, such  
25 as a serial number, an International Mobile Equipment

1 Identity (IMEI) number and a Global Unique  
2 Identifier, (GUID). These unique identifiers can be  
3 found on the device or through Apple records.

4 "Apple ID is an Apple customer's user name for an  
5 Apple customer to utilize Apple services and  
6 products. An Apple ID user name must be a valid  
7 email address.

8 "Apple assigns a unique alphanumeric value called a  
9 Directory Services Identification (DSID) to each  
10 Apple ID.

11 "Reynaldo Vargas created Apple ID hm221@pacbell.net  
12 on March 4, 2009. Apple assigned DSID 1017348707 to  
13 hm221@pacbell.net.

14 "Bernadette Melvin, with Apple ID  
15 bernadettemelvin@gmail.com and Apple DSID 5288737961,  
16 registered iPod Nano 16G Black (4th Generation)  
17 (Serial Number YM9032PS5BF) with Apple on  
18 September 4, 2009. Her phone number is 415-377-5270  
19 according to Apple records.

20 "Apple maintains basic registration or customer  
21 information, including, name, address, email address,  
22 and telephone number if an Apple customers  
23 voluntarily and proactively registers the Apple  
24 device with Apple. Apple does not verify this  
25 information.

1 "Apple maintains a Global Customer Records Management  
2 (GCRM) customer service database, to keep internal  
3 records of contacts with Apple customers regarding an  
4 Apple device or service. The summary page is titled  
5 '360-Degree View.' Any Apple product the Apple  
6 customer is associated with is recorded as an  
7 'Installed Product ID.'

8 "Apple 'Point of Sale' transactions are cash,  
9 credit/debit card, or gift card transactions that  
10 occur at an Apple Retail Store. Apple maintains  
11 records of these point of sales transactions in the  
12 ordinary course of business.

13 "iTunes gift cards have a sixteen-digit alphanumeric  
14 redemption code which is located under the  
15 'scratch-off' gray area on the back of the card, and  
16 a nineteen-digit code at the bottom of the card.

17 Based on these codes, Apple keeps business records of  
18 when a card has been activated or redeemed as well as  
19 whether any purchases have been made with the card as  
20 well as the name of the store, location, date, and  
21 time."

22 (Document taken off display)

23 (Document displayed)

24 **MR. HEMANN:** Finally (As read):

25 "Gelateria Naia is a gelato store with locations in



1 San Francisco and in Walnut Creek. The phone number  
2 at the Walnut Creek store is (925)943-1905.

3 "Macy's is a chain of department stores with  
4 approximately 850 locations in the United States.  
5 There are two Macy's Stores in San Francisco. One is  
6 located at 170 O'Farrell Street, and the second is  
7 located at 1 Stonestown Mall.

8 "3. DeWalt Industrial Tool Company manufactures  
9 power tools and is headquartered in Baltimore,  
10 Maryland.

11 "4. Nikon Corporation manufactures digital cameras  
12 and is headquartered in Tokyo, Japan.

13 "5. Tequila Herradura is a tequila distiller located  
14 in Amatitan, Jalisco, Mexico. Its parent company is  
15 the Brown-Forman Corporation based in Louisville,  
16 Kentucky."

17 (Document taken off display)

18 **MR. HEMANN:** Thank you, Your Honor.

19 **THE COURT:** Anything further?

20 **MR. HEMANN:** The United States rests, Your Honor.

21 Thank you.

22 **THE COURT:** Okay. Ladies and gentlemen, I know that  
23 it's 12:30. But, let me tell you what I expect to do, with  
24 your indulgence.

25 We now turn to the defense portion of the case. As --

1 today, the Defendants would like to call -- Defendant Sergeant  
2 Furminger would like to call as a witness an individual who  
3 has been waiting here for some two hours. And, her testimony  
4 will be relatively brief. So, I would like to do that now.

5 At the conclusion of her testimony, I'm going to excuse  
6 you for the day, and ask you to come back tomorrow morning for  
7 further proceedings.

8 However, I also told you I was going to give you an  
9 indication of what's going to happen. My view is that the  
10 case will go to you next week. As soon as Monday, possibly as  
11 soon as Monday.

12 And while I initially said that we would only meet Monday,  
13 Tuesday and Friday of next week, I want to change that,  
14 because my guess, educated or not, will be that you will be in  
15 deliberations as long as it takes, but you will probably  
16 commence your deliberations either Monday or Tuesday of next  
17 week. So, I didn't want to interrupt that process.

18 My -- I'm cancelling my other commitment. So I will be  
19 here in San Francisco, here, that week, as well -- that's  
20 called "next week" -- as well.

21 So, in the interest of trying to move the case ahead, and  
22 the fact that the evidence in the case will permit it, I would  
23 like to ask you to readjust your calendars, if you made any  
24 commitments, for -- I don't know whether I said Tuesday,  
25 Wednesday? Or Tuesday, Wednesday, Thursday? Or Wednesday and

1 Thursday?

2 Well, whatever I said, I would like you to be available to  
3 participate in the trial next week, fully, next week, with the  
4 understanding and expectation that the case will be given to  
5 you early next week for determination.

6 So, we did -- if you'll bear with us, rather than sending  
7 you out for lunch and having you come back and then listening  
8 to one witness, I would rather do it now and free you for the  
9 day -- actually, for the week -- no, not for the week. Coming  
10 in tomorrow. So, I would just like to just free you for the  
11 day, because I think that's far more convenient.

12 So, hearing no loud protests over this, let's proceed.  
13 And if you would like to stand up -- yes?

14 **ALTERNATE JUROR:** I'm sorry; would you spell out  
15 again exactly when we're here and when we're not here?

16 **THE COURT:** Yes. You would be here tomorrow. You  
17 would not be here Wednesday or Thursday or Friday of this  
18 week. Wednesday, Thursday and Friday being the Thanksgiving  
19 celebration.

20 Then, you will return Monday of next week. And it is  
21 anticipated that you will get the case for decision next week,  
22 early next week. Can't tell you exactly when right now, but  
23 early next week.

24 And, you will be expected to be here all of next week, or  
25 at least as long next week as it takes to determine the

1 outcome of the case. Okay?

2 **ALTERNATE JUROR:** Thank you.

3 **THE COURT:** Any other questions? Did you all get  
4 that?

5 (Members of the Jury indicate in the affirmative)

6 **THE COURT:** Great. Okay. If you want to stand up  
7 for a minute to stretch, and we'll call on Mr. Getz to call  
8 his witness.

9 (A pause in the proceedings)

10 **THE COURT:** You may be seated. We are resuming  
11 proceedings.

12 Mr. Getz.

13 **MR. GETZ:** Yeah, I had told the witness that we  
14 usually break from 12:00 to 1:00. I assumed she was going to  
15 stay in the lawyers' lounge, but I don't see her there now.  
16 So, I can check the cafeteria and come right back.

17 **THE COURT:** Well, I think I would rather -- well, I  
18 don't know. I don't know whether -- to take five minutes or  
19 so now probably would be worth it.

20 **MR. GETZ:** I'll just run down and see --

21 **THE COURT:** Yeah.

22 Ladies and gentlemen, you may want to retire to the jury  
23 room, but don't go anywhere, okay.

24 Remember the admonition given to you: Don't discuss the  
25 case, allow anyone to discuss it with you, form or express any

1 opinion. We'll see where we are.

2 (Jury excused)

3 (Recess taken from 12:40 to 12:46 p.m.)

4 **THE COURT:** Okay. Let the record reflect all jurors  
5 are present, the parties are present.

6 You may call your witness.

7 **MR. GETZ:** May I call Stephanie Furminger, please.

8 **THE CLERK:** Will the witness please come forward and  
9 take the witness stand.

10 Good afternoon. Please remain standing. Raise your right  
11 hand.

12 **STEPHANIE FURMINGER, DEFENDANT FURMINGER WITNESS, SWORN**

13 **THE WITNESS:** Yes.

14 **THE CLERK:** Please be seated.

15 Please state your full name, spell your last name for the  
16 record.

17 **THE WITNESS:** Stephanie Furminger.

18 **DIRECT EXAMINATION**

19 **BY MR. GETZ:**

20 **Q.** Ms. Furminger, good -- good afternoon.

21 **A.** Hi.

22 **Q.** Where did you attend high school?

23 **A.** Albany High School.

24 **Q.** When you were in high school did you know somebody who you  
25 see in this courtroom today?

1     **A.**   I did.   I do.

2     **Q.**   Who is that?

3     **A.**   Ian Furminger.

4     **Q.**   Are you two married?

5     **A.**   Not for long.

6     **Q.**   What do you mean, "not for long"?

7     **A.**   We filed for divorce in February.

8     **Q.**   Is this a friendly parting of the ways?

9     **A.**   No.

10    **Q.**   In all matters involving Ian Furminger, are you  
11    represented by an attorney?

12    **A.**   I am.

13    **Q.**   What's his name?

14    **A.**   Jerry Chang.

15    **Q.**   Is he here in court today?

16    **A.**   He is.

17    **Q.**   Where is he seated?

18    **A.**   Right there (indicating).

19    **Q.**   Okay.   When were you and Ian Furminger married?

20    **A.**   July 25th, 2004.

21    **Q.**   Did the two of you have a child?

22    **A.**   Yes.

23    **Q.**   What's his name and age?

24    **A.**   Ronan Martin Furminger.   He's nine and a half.

25    **Q.**   At some time after Ronan was born did you go back to work?

1 **A.** I did.

2 **Q.** What year was that?

3 **A.** I believe it was in 2007.

4 **Q.** In 2007, what kind of work did you do?

5 **A.** I worked for a natural and organic food distributor. I'm  
6 a sales manager.

7 **Q.** What did that entail?

8 **A.** Uhm, sales calls; travel; trade shows.

9 **Q.** Did you work full-time?

10 **A.** Yes.

11 **Q.** Would that be true, also, for 2008?

12 **A.** Yes.

13 **Q.** Would that be true, also, for 2009?

14 **A.** Yes.

15 **Q.** Have you worked full-time for that concern over the last  
16 five years?

17 **A.** I've worked for nine --

18 **Q.** Okay.

19 **A.** -- with the company.

20 **Q.** In 2009, were you employed full-time?

21 **A.** Yes.

22 **Q.** Where did the Furmingers live that year? Where did you  
23 and Ian and Ronan live?

24 **A.** Orinda.

25 **Q.** Did Ian Furminger's daughter from a previous relationship

1 live with you, also, from time to time?

2 **A.** Yes.

3 **Q.** What's her name?

4 **A.** Emma.

5 **Q.** I want you to tell the jury --

6 **A.** Sorry.

7 **Q.** And I'm referring now to the time frame about 2009. Was  
8 your family living comfortably?

9 **A.** Yes.

10 **Q.** Were there financial problems?

11 **A.** No.

12 **Q.** Is the same true for 2010?

13 **A.** Yes.

14 **Q.** And 2011?

15 **A.** Yes.

16 **Q.** Is the same true for 2012?

17 **A.** Yes.

18 **Q.** Is it fair to say the combined incomes between you and Ian  
19 Furminger resulted in a comfortable standard of living?

20 **A.** Yes.

21 **Q.** You said your marriage is breaking up. Was it breaking up  
22 and is it breaking up for financial reasons or for other  
23 reasons?

24 **A.** For other reasons.

25 **Q.** All right. Now I want to shift topics. I want to go to



1 the Orinda property.

2 Do you have that property in mind?

3 **A.** Yes.

4 **Q.** Did Ian Furminger perform repair and upgrade work on that  
5 house?

6 **A.** Yes.

7 **Q.** What kind of work did he do?

8 **A.** We did a lot of work.

9 **Q.** Describe some of it, just so I can get a feel --

10 **A.** We changed the garage and added a laundry room. We took  
11 paneling off the walls in the living room. We covered up a  
12 sliding glass door. We put in skylights. We tiled the  
13 bathroom. I mean, we did a lot.

14 **Q.** Now, you just described all these tasks that were done to  
15 upgrade the house. And you used the word "we," but it was  
16 really Ian Furminger who was doing it; correct?

17 **A.** Yes.

18 **Q.** And did he have some help when he did this work? Did he  
19 have someone he paid to help him?

20 **A.** Yes.

21 **Q.** Do you know a handyman named Nacho?

22 **A.** I do.

23 **Q.** Was that someone who helped him?

24 **A.** Yes.

25 **Q.** Do you happen to know Nacho's true name?

1     **A.** I believe it's Ignacio.

2     **Q.** Okay. And when did you first meet Ignacio?

3     **A.** About 2007.

4     **Q.** And when you met him in 2007, was he helping Ian work on  
5 the house you then lived in?

6     **A.** Yes.

7     **Q.** Where was that house?

8     **A.** Burlingame.

9     **Q.** What kind of work did Nacho and Ian do there --

10    **A.** Laundry list.

11    **Q.** -- that you remember?

12    **A.** They remodeled a bathroom. Put in a master closet. Did  
13 an addition to the back kitchen. A deck. We worked -- or  
14 they worked on a garage. Windows throughout the whole house.  
15 Remodeled a kitchen. Pretty much everything.

16    **Q.** Is Nacho someone you've seen on a regular basis over the  
17 last seven years?

18    **A.** Not anymore.

19    **Q.** Okay. The Orinda house was sold; right?

20    **A.** Yes.

21    **Q.** And you two are now living separately; correct?

22    **A.** Yes.

23           **MR. GETZ:** All right. Thank you. I have no further  
24 questions.

25           **THE COURT:** Any questions?

1           **MR. HEMANN:** Just a few, Your Honor.

2                           **CROSS EXAMINATION**

3       **BY MR. HEMANN:**

4       **Q.** Good afternoon, Ms. Furminger. My name is John Hemann,  
5       and I'm an assistant United States Attorney.

6           What was Mr. Furminger's monthly income from the SFPD in  
7       2009?

8       **A.** His monthly income?

9       **Q.** (Nods head.)

10      **A.** He made a little over 120,000 that year, so I don't know.

11      **Q.** How do you know that?

12      **A.** Because I have my tax returns.

13      **Q.** And how recently did you look at those tax returns?

14      **A.** Uhm, two days ago.

15      **Q.** In preparation for testifying today?

16      **A.** I did.

17      **Q.** What was Mr. Furminger's child support obligation in 2009?

18      **A.** To -- for Emma?

19      **Q.** For his daughter from the previous marriage.

20      **A.** I believe it was 650 a month.

21      **Q.** And do you remember that? Did you have to refresh your  
22      recollection on that recently?

23      **A.** No.

24      **Q.** Has it been 650 a month for a long period of time?

25      **A.** In 2007. I don't -- I don't know what he pays now.

1 Q. So from 2007 until when?

2 A. It went up, I think, around 2009, to 1600 a month.

3 Q. So in 2009 it went from \$650 a month to \$1,600 a month?

4 A. Correct.

5 Q. And the income that Mr. Furminger received from SFPD, that  
6 \$120,000 number you mentioned a couple of moments ago, that  
7 was pre-tax income; correct?

8 A. Yes.

9 Q. And when you bought -- what year did you buy your house in  
10 Orinda?

11 A. 2008.

12 Q. What was your monthly mortgage payment on that house in  
13 2009?

14 A. It was a little over 3,000.

15 Q. A month?

16 A. Uh-huh.

17 Q. You and Mr. Furminger, when you were still together, kept  
18 separate finances; is that fair to say?

19 A. Yes.

20 Q. So he had his separate bank account and credit cards and  
21 things like that?

22 A. Yes. We had a few credit cards together. American  
23 Express. We had one bank account together, but I didn't use  
24 it.

25 Q. And you did not, during the time you were together, manage

1 or track his separate finances; correct?

2 **A.** I managed the household finances.

3 **Q.** But he was able to spend money, sort of, without you  
4 doling it out or overseeing it in any way; correct?

5 **A.** Yes.

6 **Q.** He worked with you or he worked at the San Francisco  
7 Police Department in -- from 2009 until 2012, when you were  
8 still together?

9 **A.** Yes.

10 **Q.** And would it be accurate to say, Mrs. Furminger, that he  
11 did not share with you much about his activities at the SFPD?

12 **A.** That is correct.

13 **Q.** Mr. Furminger was a heavy drinker during your marriage?

14 **MR. GETZ:** Object. It's irrelevant to any issue in  
15 the case.

16 **THE COURT:** Sustained.

17 **BY MR. HEMANN:**

18 **Q.** Did Mr. Furminger spend money on social events outside of  
19 your presence?

20 **A.** Yes.

21 **Q.** Did he have friends and things -- would he go out without  
22 you?

23 **A.** Not often.

24 **Q.** Would he go out with people from SFPD without you?

25 **A.** Yes.

1 Q. Would he spend money during those events without you?

2 A. I don't know.

3 Q. You don't know a person by the -- personally, you don't  
4 know a person by the name of Sergio Sanchez, do you?

5 A. I do not.

6 Q. Did you ever, while you were married to -- while you were  
7 together with Mr. Furminger, socialize with anybody by the  
8 name of Sergio Sanchez?

9 A. I did not.

10 Q. And did Mr. Furminger ever tell you that he was  
11 socializing with a person by the name of Sergio Sanchez?

12 A. I've heard his name but not social.

13 Q. You heard his name because you discovered it while  
14 looking -- you discovered his phone number while looking  
15 through Mr. Furminger's telephone for another reason; correct?

16 A. Correct.

17 Q. You did not know that Mr. Furminger was obtaining property  
18 from Mr. Sanchez, did you?

19 A. No.

20 Q. When you purchased your house with Mr. Furminger in  
21 November 2008, there were not skylights in the house; correct?

22 A. There were not.

23 Q. About seven months after you purchased the house,  
24 skylights were installed by Mr. Furminger and by Ignacio  
25 Ramirez; correct?

1 **A.** I'm not sure. I don't remember when they were installed.  
2 But, yes, Nacho and Ian put them in the living room.

3 **Q.** At some point in time after you purchased the house;  
4 correct?

5 **A.** Yes.

6 **Q.** Mr. Furminger paid Mr. Ramirez, didn't he?

7 **A.** Nacho?

8 **Q.** Yes.

9 **A.** Yes.

10 **Q.** You know him as Nacho, not Mr. Ramirez, I take it? Yes?

11 **A.** Correct.

12 **Q.** Mr. Furminger paid Nacho; correct?

13 **A.** Correct.

14 **Q.** And Mr. Furminger was the person who obtained the  
15 supplies, the hardware, the lights for the actual -- for the  
16 skylights; correct?

17 **A.** Correct.

18 **MR. HEMANN:** No further questions, Your Honor.

19 **MR. GETZ:** I have nothing further.

20 **THE COURT:** Ms. Caffese?

21 **MS. CAFFESE:** No, Your Honor. Thank you.

22 **THE COURT:** Thank you very much.

23 (Witness excused.)

24 **THE COURT:** So, ladies and gentlemen, we are now  
25 going to take our recess for the day.

## PROCEEDINGS

1 Remember the admonition given to you. Don't discuss the  
2 case, allow anyone to discuss it with you, form or express any  
3 opinion.

4 Please leave your notebooks in the jury room. And we will  
5 start tomorrow at 9 o'clock.

6 So thank you very much. Have a pleasant evening.

7 (Jury out at 1:00 p.m.)

8 **THE COURT:** Okay. Let the record reflect the jurors  
9 have left.

10 So what I'd like to do is see you back here at 2:30, and  
11 we will go over jury instructions at that time, to the extent  
12 we're able to, which I think we are. The parties have to be  
13 here, obviously.

14 So see you at 2:30.

15 **MR. HEMANN:** Thank you, Your Honor.

16 **MR. VILLAZOR:** Thank you, Your Honor.

17 (Recess from 1:02 to 2:30 p.m.)

18 (The following proceedings were held in open court,  
19 outside the presence of the jury:)

20 **THE COURT:** Please be seated.

21 Let the record reflect that the parties are present. The  
22 jury is not present. We're here to discuss instructions.

23 In reviewing the instructions, I have several concerns. I  
24 suppose the principal concern addresses the honest services  
25 charge.



1 First, unless I have -- and I don't have it in front of  
2 me. My law clerk has it. She will be out here in a minute.  
3 Well, I'll come back to that when I get it in front of me.

4 But, obviously, just to go through some boilerplate, I  
5 don't think there's anything unusual except that if one  
6 defendant testifies, the other one doesn't testify --  
7 Ms. Caffese.

8 **MS. CAFFESE:** It's just --

9 **THE COURT:** Go right ahead.

10 **MS. CAFFESE:** Excuse me for interrupting, Your Honor,  
11 but Mr. Robles has advised me that he does not wish to  
12 testify.

13 **THE COURT:** Okay. So let me ask you, Mr. Robles --  
14 if you would stand up a minute -- you understand you have the  
15 right to testify and the right not to testify?

16 **MR. ROBLES:** Yes, Your Honor.

17 **THE COURT:** And you are free to use your own  
18 judgment, obviously informed by your attorney. But it is your  
19 right. It's not your attorney's right.

20 So having that in mind and hearing all the evidence in the  
21 case, is it your desire to testify or not to testify?

22 **MR. ROBLES:** Not to testify, Your Honor.

23 **THE COURT:** Okay. Thank you very much.

24 Now, Sergeant Furminger --

25 **MR. FURMINGER:** Yes.

1           **THE COURT:** -- same thing for you.

2           Having in mind the fact that Officer Robles is not going  
3           to testify, is it your desire individually, because you would  
4           be the sole defendant testifying, do you wish to testify or do  
5           you not wish to testify?

6           **MR. FURMINGER:** After conferring with counsel, I'll  
7           say no, I'm not going to testify.

8           **THE COURT:** You do not wish to testify?

9           **MR. FURMINGER:** That's correct.

10          **THE COURT:** Okay. All right.

11          Now, I'm wondering if I should get in the jury -- they're  
12          coming in tomorrow with nothing to do except for me to send  
13          them home.

14          Barbara, how difficult is it to reach the jurors?

15          I probably should bring them in any way, apologize to  
16          them. I'll take it, you know. I'll say we're discussing the  
17          legal issues. As a result, we're going to spend the day in  
18          conference ironing out different legal issues. There's no  
19          reason to keep the jury there.

20          Both parties will rest in front of the jury. And I'll  
21          thank them. And then I want to give them a strong admonition  
22          because it's over the holiday.

23          So don't worry about that. I'm not going to phone them  
24          and tell them not to come in. They'll come in.

25          **MS. CAFFESE:** Thank you, Your Honor. I apologize.

1           **THE COURT:** No, no. That's all right. Look, these  
2 are not simple decisions. And they're client decisions.  
3 They're not lawyer decisions. And a client may be of two  
4 minds and uncertain, or certain of one and want to change  
5 their mind. That's their right. And I do not hold it against  
6 them. And I don't hold it against the lawyers.

7           **MS. CAFFESE:** Thank you.

8           **THE COURT:** It's, perhaps, the most important  
9 decision they have to make in the case. And so it's important  
10 that they be given as much latitude as possible. They don't  
11 have all that much latitude anyway. So given all the latitude  
12 they prefer not to be here. Right? Right.

13           Okay. Thank you.

14           You can sit down, Sergeant. If you want to stand up, you  
15 can stand up.

16           So, anyway, there we are.

17           Oh, I also am assuming, Ms. Caffese, that you're not going  
18 to call any witnesses?

19           **MS. CAFFESE:** Correct.

20           **THE COURT:** All right. Okay. And I'm assuming,  
21 Mr. Getz, that you have completed your witness presentation?

22           **MR. GETZ:** Yes. We're prepared to rest subject to  
23 the renewal of various motions.

24           **THE COURT:** Okay. All right. So let's go back, now,  
25 to the boilerplate.

1 I will give that they should not draw any inference by a  
2 defendant not testifying. So that will be the instruction as  
3 to that.

4 Next, I give a modified circumstantial evidence  
5 instruction. And it's modified in the following way until I  
6 get reversed by the Court of Appeal on this:

7 "Evidence may be direct or circumstantial." Then I cut  
8 out the next two sentences, which explains the difference  
9 between direct and circumstantial evidence. Which, I have yet  
10 to find anybody able to really explain, in some detail, as to  
11 exactly what is meant and why the examples are good examples  
12 of direct and circumstantial.

13 By the way, I just want you to note that the comment to  
14 the instruction is three times the length of the instruction,  
15 which is some indication as to the confusion that this  
16 instruction causes.

17 However, I give the second paragraph: "You are to  
18 consider both types of evidence."

19 Okay. Far be it from me to criticize the Ninth Circuit in  
20 their exercise of their jury instructions. But if they think  
21 it's so important they can chastise me. Now -- which they  
22 could do.

23 Next we go to --

24 **MS. CAFFESE:** Excuse me, Your Honor. May I?

25 **THE COURT:** Yes, of course.

1           **MS. CAFFESE:** Are both sentences after the first and  
2 third paragraph deleted?

3           **THE COURT:** Yes.

4           **MS. CAFFESE:** Both of them. Thank you.

5           **THE COURT:** The two sentences are purportedly  
6 definitional sentences.

7           **MS. CAFFESE:** All right. Thank you.

8           **THE COURT:** Let's see. I'm trying to waste some time  
9 here.

10           Barbara, can you just ask Denise for what she's got.

11           **THE CLERK:** She's coming in now.

12           **THE COURT:** Is she?

13           **THE CLERK:** Yeah.

14           **THE COURT:** Because I want to chastise Mr. Hemann.

15           Mr. Hemann, is it true, is it true that you have more than  
16 a passing familiarity with the *Skilling* case?

17           **MR. HEMANN:** I have a passing familiarity with the  
18 *Skilling* case before it was mucked up on appeal by others.

19           **THE COURT:** Others --

20           **MR. HEMANN:** Possibly --

21           **THE COURT:** Are you familiar with the Supreme Court's  
22 decision?

23           **MR. HEMANN:** When I say "appeal," I would include  
24 them in it. But, yes, Your Honor, I have a passing  
25 familiarity with the *Skilling* case. I do.

1           **THE COURT:** So you would know that the United States  
2 Supreme Court has redefined "honest services"; something  
3 that's not reflected in your proposed instruction, is it?

4           **MR. HEMANN:** I would say that it is, Your Honor.  
5 Very much so.

6           **THE COURT:** All right.

7           **MR. HEMANN:** And our resident expert on the *Skilling*  
8 case --

9           **THE COURT:** Is whom?

10          **MR. HEMANN:** Mr. Wilson.

11          **THE COURT:** He's on his way out, isn't he?

12          (Laughter)

13          **MR. HEMANN:** Yes. Not for this.

14          And we just talked to him about this.

15          **THE COURT:** Really?

16          **MR. HEMANN:** And he found this to be peachy keen  
17 under --

18          **THE COURT:** Okay. Let's --

19          **MR. HEMANN:** I can regale you with why, if you wish,  
20 Your Honor.

21          **THE COURT:** Well, he may have to come up here. I'll  
22 give him all day tomorrow. But I don't think he's going to be  
23 too happy.

24          Okay. Let me just go through some boilerplate for a  
25 minute, okay. And then we'll get to honest services.

1 If you want to call him to come up now that's fine.

2 **MR. HEMANN:** You know what? Let's give it a crack.

3 **THE COURT:** You want to see if you can handle it?

4 **MR. HEMANN:** I'll try. And if I end up in custody  
5 then he can come up and explain to you why --

6 **THE COURT:** It's been a while since I put a U.S.  
7 Attorney in custody.

8 **MR. HEMANN:** It would be a welcome respite, Your  
9 Honor. Thank you.

10 **THE COURT:** Yeah. Okay.

11 Oh, Activities Not Charged, 3.10, I give that. There's  
12 been a little bit of other evidence. Great. So I'm going to  
13 give that.

14 Do I give 4.3, Other Crimes, Wrongs or Acts of a  
15 Defendant? I don't think so.

16 **MR. HEMANN:** I don't think so, Your Honor.

17 **MR. VILLAZOR:** No, Your Honor.

18 **THE COURT:** All right. Let's talk about Impeachment  
19 Evidence - Witness, 4.8. I was going to say:

20 "You have heard evidence that Reynaldo  
21 Vargas, a witness, was impeached with a prior  
22 inconsistent statement with falsehoods by  
23 omission in police reports and false  
24 statements to the Office of Citizen  
25 Complaints. You may consider this evidence

1 in deciding whether or not to believe this  
2 witness and how much weight to give to the  
3 testimony of this witness."

4 I say more about Vargas, but I'm now talking about  
5 impeachment. I also talk about him being a defendant, you  
6 know, and he's awaiting sentencing and so forth. So I don't  
7 want to talk about that right now. I just want to talk about  
8 false statements.

9 **MS. CAFFESE:** I actually drafted another one that I  
10 believe --

11 **THE COURT:** Well, maybe you better hand it up.

12 **MS. CAFFESE:** I believe I gave --

13 **THE COURT:** It's already been handed up?

14 **THE CLERK:** Yes, Your Honor. It's what I gave you on  
15 top.

16 (The Court and law clerk confer.)

17 **THE COURT:** Well, you're concerned here about Cesar  
18 Hernandez being included in that?

19 **MS. CAFFESE:** Also, and additionally, that he has  
20 been -- additionally, Reynaldo Vargas admitted to making  
21 falsehoods in police reports and making false statements to  
22 the Office of Citizen Complaints.

23 But, I believe, what's missing is that he actually  
24 admitted to making false --

25 **THE COURT:** I believe you're right, he didn't. But I



1 think he was impeached with it. I don't know that -- I don't  
2 think you add the statement that he admitted it, for a variety  
3 of reasons.

4 Number one, to say that somebody is a liar and, therefore,  
5 you can impeach him, and that he admitted that he lied, maybe  
6 his admission that he lied was a lie -- I mean, I don't know  
7 where you stop and where you start. I think logic dictates.

8 But, still, it is -- it's the fact that he lied that is  
9 the important fact for impeachment, not that he admitted his  
10 lie, which is evidence of the fact that he was successfully  
11 impeached by the lie.

12 So, in other words, it becomes, in my view, argumentative.  
13 That's an argument. You say and you're free to say -- by the  
14 way, I'm not telling you how to argue the case. But you're  
15 free to say not only did he lie to the OCC, and did he lie in  
16 his police -- I don't know whether you're going to say that --  
17 did he lie to the OCC? But he admitted he lied to the OCC.  
18 It's not -- it's not in question. Everybody here says he  
19 lied, including him.

20 So I don't think adding the admission is anything more  
21 than argument. And I will allow you to argue it.

22 Now let's go to Cesar --

23 **MS. CAFFESE:** Yes.

24 **THE COURT:** -- Hernandez, because I don't know what  
25 we're talking about here.

1 What are we talking about?

2 **MS. CAFFESE:** If I may, Your Honor.

3 **THE COURT:** Oh, yeah.

4 **MS. CAFFESE:** I will point out that he admitted,  
5 during cross-examination, that he made false statements to the  
6 FBI agents, to Inspector Keller. And that would obviously go  
7 to his impeachment.

8 I had asked him, for example, "Didn't you tell Inspector  
9 Keller the car was green on such and such date?" And he would  
10 reply on at least two or three occasions, "Well, if that's  
11 what it says there, if that's what's recorded then, yes,  
12 that's true." Which, of course, is different than what he  
13 would be testifying in court.

14 **THE COURT:** I don't view those as admissions. I  
15 don't view those as admissions.

16 You can argue it. You certainly can argue it, but it's  
17 not that I would say to the jury he has been impeached by  
18 those statements.

19 To single out some -- and there's a lot of impeachment.  
20 Your whole case is a case of impeachment. That's exactly  
21 what -- I think, unless I've missed it, you're saying these  
22 people are lying.

23 **MS. CAFFESE:** True.

24 **THE COURT:** That's the case. You believe them or you  
25 don't believe them. One or more. And that's the case.

1       So I'm not running out and saying this person lied here;  
2       this person lied there. Except in the case of Vargas, he did  
3       admit unequivocally that he lied under previous occasions.  
4       And that is something that the jury can consider.

5       I'm not going to add Cesar Hernandez to it.

6       Okay. Now we go to Testimony of Witness Involving Special  
7       Circumstances. There I do talk about Cesar Hernandez. And  
8       I -- maybe I should read this to you.

9       Is it there somewhere? Do they have this?

10       **LAW CLERK:** They haven't seen it.

11       **THE COURT:** You haven't seen it?

12       **LAW CLERK:** No.

13       **THE COURT:** Okay.

14       "You have heard testimony from Cesar Hernandez, a  
15       witness who received immunity. That testimony was  
16       given in exchange for a promise by the government  
17       that the witness will not be prosecuted for certain  
18       crimes and the testimony will not be used in any case  
19       against him.

20       "Cesar Hernandez also received benefits and  
21       compensation from the government in connection with  
22       this case, and admitted to being an accomplice to the  
23       crimes charged."

24       I would have to say "several," I guess.

25       "An accomplice is one who voluntarily and

1 intentionally joins with another person in committing  
2 a crime."

3 Okay. Does anybody have a problem with that?

4 **MR. HEMANN:** No, Your Honor.

5 **MS. CAFFESE:** No, Your Honor.

6 **THE COURT:** Okay. Goes on:

7 "You have also heard testimony from Reynaldo Vargas,  
8 a witness who pleaded guilty to crimes arising out of  
9 the same events for which defendants are on trial,  
10 and was given promises by the government as set forth  
11 in a plea agreement that was admitted into evidence.

12 This guilty plea is not evidence against the  
13 defendants, and you may consider it only in  
14 determining this witness's believability.

15 "For these reasons, in evaluating the testimony of  
16 Cesar Hernandez and Reynaldo Vargas you should  
17 consider the extent to which and whether either of  
18 their testimony" -- I don't know whether that's --

19 "may have been influenced by any of these factors.  
20 In addition, you should examine the testimony of  
21 Cesar Hernandez and Reynaldo Vargas with greater  
22 caution than that of other witnesses."

23 Any problem with that?

24 **MR. HEMANN:** No.

25 **MR. VILLAZOR:** No, Your Honor.

PROCEEDINGS

1           **MR. GETZ:** No.

2           **MS. CAFFESE:** No, Your Honor.

3           **THE COURT:** Moving right along. We didn't have an  
4 expert, did we?

5           **MR. HEMANN:** No.

6           **MR. VILLAZOR:** No.

7           **THE COURT:** No opinion evidence; right?

8           **MR. VILLAZOR:** No.

9           **MR. HEMANN:** Correct.

10          **THE COURT:** We don't have summaries not received in  
11 evidence; right?

12          **MR. HEMANN:** I don't think.

13          **THE COURT:** I don't know of any.

14          **MR. VILLAZOR:** No, Your Honor.

15          **THE COURT:** Charts and Summaries in Evidence.

16          **MR. HEMANN:** Yes.

17          **MR. VILLAZOR:** Yes.

18          **THE COURT:** Well, we did have that. That "whose-its  
19 magooz-its" I introduced.

20          **MR. HEMANN:** Yes.

21          **THE COURT:** Okay. We have that. Okay. I'm going to  
22 give that. 4.16 I'm giving.

23           I'm not giving "Knowingly" as a standalone instruction  
24 because I think it's covered in the other. Okay.

25           Now we'll start with the troublesome instructions provided

1 by the government in this case.

2 Counts One and Two, Wire Fraud. We start with the  
3 sentence after some introduction:

4 "First, the defendant knowingly devised and intended  
5 to devise a scheme or plan to defraud or a scheme or  
6 plan for obtaining money or property by means of  
7 false or fraudulent pretenses, representations, or  
8 promises."

9 Now, the difference between the government's version and  
10 the Court's version are -- is elimination, that the Court has  
11 eliminated the words "participation in," which are important.  
12 I mean, they're words. I'm just saying they're not  
13 insignificant words.

14 And the reason is -- do we have the indictment?

15 **LAW CLERK:** I can get that for you, Judge.

16 **MR. GETZ:** I have it here.

17 **THE COURT:** All right. So we take a look at the  
18 indictment. I have it. I have it. I have it here. And I  
19 look at as this case was indicted. And I don't see the words  
20 in the indictment. In Count One and Two I don't see the words  
21 "participated in." Maybe I missed it.

22 **MR. HEMANN:** You are correct, Your Honor.

23 **THE COURT:** Well, if I'm correct then you were not  
24 correct. So that goes out.

25 **MR. VILLAZOR:** Correct again, Your Honor.

1           **THE COURT:** That's why I get the big bucks. Okay.  
2 Because I've got a very good law clerk. That's why.

3           All right. So there the words "participation in" or  
4 "participation" is out. It's not in the indictment.

5           Now, let's go back, however, because I'm -- I'm a little  
6 concerned, based upon the evidence, though I think it could be  
7 there, but based upon the evidence of the term "intended to  
8 devise a scheme or plan to defraud."

9           That's not this case, is it? This case is that they did  
10 knowingly devise bah, bah, bah.

11           I don't understand what the intention was. We intended to  
12 do it but didn't succeed?

13           What are they saying here?

14           **MR. HEMANN:** Well, for example, there was testimony  
15 for -- this is just by way of example -- from Mr. Hernandez,  
16 if believed, that towards the end of 2009, with regard to the  
17 auto body shop, the defendants got together and devised a plan  
18 to rob the auto body shop, that was discussed by Mr. Robles  
19 with Mr. Hernandez in Mr. Furminger's presence.

20           And so that would be intending to devise a plan to obtain  
21 money.

22           **THE COURT:** But are you --

23           **MR. HEMANN:** But not actually doing that.

24           **THE COURT:** Are you arguing that? Is that one of  
25 the --

1           **MR. HEMANN:** Part of the scheme, Your Honor, yes.

2           **THE COURT:** Part of the scheme. Well, maybe. Okay.  
3 I mean, it's alleged in the indictment.

4           **MR. HEMANN:** And I would -- I would say also --

5           **THE COURT:** You say there's some evidence. You say  
6 there's evidence in the record that they intended to devise a  
7 plan.

8           **MR. HEMANN:** I mean, certainly, there's -- there's  
9 other -- there's other examples.

10           There was some communications with regard to the  
11 self-storage locker when money was found, but before money was  
12 actually taken, and calls were made to Mr. Robles and  
13 Mr. Furminger who went out, so --

14           **THE COURT:** I think there's enough there.

15           I don't think I have any other comment on that. Which  
16 takes me to my favorite charge: Honest Services Wire Fraud.

17           So starting with --

18           **MS. CAFFESE:** Your Honor, before we move on --

19           **THE COURT:** Sure, Ms. Caffese.

20           **MS. CAFFESE:** -- may I comment on this particular  
21 instruction?

22           **THE COURT:** Yes.

23           **MS. CAFFESE:** And I believe the Court has a copy of  
24 one change that I would request.

25           **THE COURT:** Let's take a look. Wait. Wait. Wait.



1 Wait. Yes. You say:

2 "Third, the defendant acted with the specific intent  
3 to defraud."

4 **MS. CAFFESE:** Correct. And I say that because that's  
5 my understanding of the case law, is that the defendant has to  
6 have the specific intent to defraud; and, therefore, it should  
7 be included in the -- in the instruction that's read to the  
8 jury.

9 **THE COURT:** Well, I say they have to have the intent.

10 **MR. HEMANN:** So the Ninth Circuit, Your Honor, says  
11 that, "The Committee recommends avoiding instructions that  
12 distinguish between specific intent and general intent." And  
13 that's 5.4 in the manual.

14 Ms. Caffese suggests just adding the word "specific  
15 intent," but then using the definition provided in the  
16 government's proposed instruction, which is the intent to  
17 deceive or cheat. And that's already in the instruction.

18 I take the Committee's recommendation to say don't say  
19 "specific or general intent" because it's confusing, but  
20 define the intent which is in the instruction the Court  
21 intends to give, which is the intent to deceive or cheat.

22 **THE COURT:** I'm going to leave it without the word  
23 "specific."

24 Okay. So that's one criticism. I mean, that's one  
25 objection.

1 Now, what I was interested in is the government's view --  
2 wait. First, the government suggests that there's another  
3 part of honest services.

4 What do you say it is? I don't have yours in front of me  
5 right now. Why don't you read your first element as you  
6 wrote.

7 **MR. HEMANN:** The first element:

8 "The defendant was required, while on duty, to act  
9 for the benefit of the City and County of San  
10 Francisco or the citizens San Francisco" --

11 **THE COURT:** No, no. I'm not there yet. Where am I?  
12 I'm at Counts Three and Four.

13 **MR. HEMANN:** Yes.

14 **THE COURT:** First.

15 Oh, oh, by the way, I'm taking out "Citizens of  
16 San Francisco." They're out. It was objected to, and I think  
17 that's proper.

18 Okay. Go ahead read it again, slowly.

19 **MR. HEMANN:** (As read:)

20 "First, the defendant was required, while on duty, to  
21 act for the benefit of the City and County of San  
22 Francisco or the San Francisco Police Department on  
23 all matters within the scope of their relationship."

24 We added that, Your Honor, because of the *Milovanovic*  
25 case, which suggests that that duty should be something that

1 is found by the jury.

2 And, in an abundance of caution, rather than assume the  
3 duty to act for the benefit, we thought the best course was to  
4 instruct the jury that they needed to find that there was that  
5 duty.

6 I don't think it's going to be a hotly disputed --

7 **THE COURT:** No, no, I think that's fine. I don't see  
8 a problem with that. But go ahead. Read more because there's  
9 more. Go ahead.

10 **MR. HEMANN:** You want me just to say "participated"  
11 again, don't you?

12 **THE COURT:** No, no.

13 **MR. HEMANN:** Because I'm just going to take that one  
14 out when I read it.

15 **THE COURT:** That's out. But I think there's  
16 something else that's out.

17 **MR. HEMANN:** So, second --

18 **THE COURT:** Yeah.

19 **MR. HEMANN:** That's first.

20 "Second, the defendant knowingly devised or intended  
21 to devise a scheme or plan to defraud or a scheme or  
22 plan to deprive the City and County of San Francisco  
23 or the San Francisco Police Department of their right  
24 to honest services.

25 **THE COURT:** Okay. Go ahead. I'm going to put an

1 "or" there, by the way. "Knowingly devised or intended."

2 **MR. HEMANN:** (As read:)

3 "Third, the defendant acted with the intent to  
4 defraud and to deprive the City and County of San  
5 Francisco or the San Francisco Police Department of  
6 their right to honest services."

7 **THE COURT:** Yeah.

8 **MR. HEMANN:** That's the intent element defined in the  
9 next instruction.

10 "And, fourth, the defendant used or caused to be used  
11 a wire communication to carry out or attempt to carry  
12 out an essential part of the scheme."

13 Those are our four elements that the case --

14 **THE COURT:** What about the scheme?

15 **MR. HEMANN:** So the scheme is on the next -- the  
16 honest -- the intent to defraud is the scheme.

17 **THE COURT:** Okay. Wait a minute. Where do I find  
18 the description --

19 **MR. HEMANN:** The intent to defraud is our Number 24,  
20 the next one, beginning with, "Public officials inherently owe  
21 a duty to act in the public's best interest."

22 **THE COURT:** So read that to me.

23 **MR. HEMANN:** Okay. And this is an instruction that  
24 we took from the *Kincaid-Chauncey* case, as modified by both  
25 *Skilling* and by *Garrido*:

1 "Public officials inherently owe a duty to the public  
2 to act in the public's best interest. If, instead,  
3 the official accepts something of value with an  
4 intent to be influenced or rewarded, a bribe or  
5 kickback" -- and, I think, it would probably read  
6 better if it said: "If, instead, the official  
7 accepts a bribe or kickback" -- in other words  
8 something of value with intent to be influenced or  
9 rewarded -- "the official has defrauded the public of  
10 the official honest services" --

11 **THE COURT:** Good. Let's start with that. What  
12 evidence is there that there was a bribe or a kickback in this  
13 case?

14 **MR. HEMANN:** So, if we have a transcript, Mr. Sanchez  
15 testified that he gave things to the defendants for the  
16 purpose of obtaining protection. That was his testimony. In  
17 exchange for doing something, i.e. letting him -- what he said  
18 was, "Letting me continue to do my business," which he  
19 thereafter defined as selling stolen property. He gave --

20 **THE COURT:** Well, wait. Maybe we don't have to have  
21 a long discussion of this.

22 This honest services count relates only to Sergio -- it  
23 doesn't relate to all the dope or all the money that was  
24 taken.

25 **MR. HEMANN:** Absolutely.

1           **THE COURT:** I'm saying that's alleged. I'm not  
2 saying --

3           **MR. HEMANN:** Correct.

4           The way the indictment is alleged, Counts One and Two go  
5 to the dope and money. Counts Three and Four in the -- the  
6 wires are the Sergio Sanchez wires or text messages.

7           So Counts Three and Four only go to Sergio Sanchez. They  
8 do not go to the straight up thefts we that are arguing. And  
9 we would not argue it that way. And we think it would be  
10 inappropriate to argue it that way.

11           **THE COURT:** I appreciate that that's why this  
12 conference is useful, because it gets me on the right page.

13           So those are the bribes and kickbacks?

14           **MR. HEMANN:** Correct.

15           **THE COURT:** And it's limited to bribes or kickbacks.  
16 There's not anything else in terms of honest services?

17           **MR. HEMANN:** Correct.

18           **THE COURT:** For example, a police officer -- I have  
19 to ask you, a police officer writes a false police report.  
20 One. A police officer takes money from a crime scene, two.  
21 Those are not honest services violations?

22           **MR. HEMANN:** Without the additional fact of getting  
23 something in exchange for doing those things.

24           **THE COURT:** There's no *quid* for the *quo*.

25           **MR. HEMANN:** There needs to be at least an implicit

1 *quid pro quo.*

2 **THE COURT:** And there isn't in those cases.

3 **MR. HEMANN:** In those cases --

4 **THE COURT:** Well --

5 **MR. HEMANN:** In Sergio Sanchez's case, yes.

6 **THE COURT:** Okay. Leaving Sergio to the side here  
7 with all these other people who were --

8 **MR. HEMANN:** Unaware.

9 **THE COURT:** -- right. Andrew Card, or whatever his  
10 name.

11 **MR. HEMANN:** Byrd.

12 **MR. VILLAZOR:** Byrd.

13 **THE COURT:** Thank you. I guess he was a White  
14 House --

15 **MR. HEMANN:** Right.

16 **THE COURT:** Sorry.

17 And others, that was just -- that's not an honest services  
18 issue?

19 **MR. HEMANN:** Correct.

20 **THE COURT:** Okay. Okay. I think then -- okay. I  
21 think I understand that.

22 What was the other thing you and I talked about on that?

23 **THE LAW CLERK:** Well, we added the "bribe or  
24 kickback" as an element, which I don't think the government  
25 had in their original instructions. They indicted the

1 concealment theory, which is not good law or *Skilling*.

2 **THE COURT:** Got that?

3 **LAW CLERK:** In the indictment we added --

4 **THE COURT:** Yes. When you look at your indictment  
5 you talk about -- you say:

6 "The defendant's honest and faithful services through  
7 bribery, kickbacks, and the concealment of material  
8 information."

9 Do you see that --

10 **MR. HEMANN:** Yes.

11 **THE COURT:** -- in the indictment?

12 But that's out as a result of *Skilling*, the last, "and the  
13 concealment" --

14 **MR. HEMANN:** "Concealment" standing alone would not  
15 be in under --

16 **THE COURT:** Okay. So that's out.

17 **MR. HEMANN:** Correct.

18 **THE COURT:** That's out. And we're only talking about  
19 bribery and kickbacks.

20 **MR. HEMANN:** We did not, for that reason, put in the  
21 instruction "concealment."

22 **THE COURT:** Okay.

23 **MR. HEMANN:** And if the Court -- if you look at  
24 *Kincaid-Chauncey*, *Kincaid-Chauncey* is these instructions as we  
25 put in, except for we took out the concealment basis because



1 under *Skilling* that's no longer good law.

2 And *Garrido* talks about the parts of *Kincaid-Chauncey* that  
3 survived *Skilling*, which is the bribe/kickback language.

4 **THE COURT:** Okay. So what I'm going to do is redraft  
5 these this afternoon and probably post them, these special --  
6 and post them for your comments tomorrow. Okay.

7 **MR. HEMANN:** Okay.

8 **THE COURT:** I mean, it's really important that I get  
9 this right. And I know the government feels that way. And  
10 the defense can feel any way they want to on this. But it's  
11 important that I get this right, and so I welcome comments  
12 from the parties afterwards.

13 Mr. Getz.

14 **MR. GETZ:** If I might interject, I would -- when the  
15 Court works through that, I'd like the Court to consider my  
16 Rule 29 because I put in a paragraph on Count Three, on page 2  
17 of my Rule 29, in which I --

18 **THE COURT:** Well, then, I think I have to deal with  
19 the Rule 29 right now.

20 **MR. GETZ:** Pardon?

21 **THE COURT:** I think I have to deal with your Rule 29  
22 right now. In other words, if I grant the Rule 29 then the  
23 instructions will be different.

24 So if I either deny it or take it under submission, then  
25 that's another issue. So what is your Rule 29?

1           **MR. GETZ:** Well, my Rule 29 on that count, Count  
2 Three, is that Count Three charged a September 7th, 2011, text  
3 message from Sergio to Furminger. It was just one message.  
4 And that was introduced at trial involving Sergio's statement  
5 that he had a GPS for Furminger.

6           And the Court can look at that, at the transcript, at page  
7 1132. We have a copy of that if the Court wants to see it.

8           **THE COURT:** I should.

9           **MR. GETZ:** At that point in the testimony Sergio  
10 Sanchez testified that he gave a GPS to Furminger, and that  
11 Furminger paid for it. That's at page 1117.

12           And then the government wanted to establish that Sanchez  
13 was not paid for it, which he would not say. However, he did  
14 read into evidence, or the government did, the Grand Jury  
15 testimony in which Sergio Sanchez stated, quote, Seems to me  
16 he did not pay me, unquote. That's at page 118.

17           So our feeling is there's inadequate evidence to show that  
18 there was any *quid pro quo* for that particular transaction,  
19 and that the evidence, we think, is inadequate to let Count  
20 Three go to the jury.

21           So that was the point we wanted the Court to consider in  
22 the Count Three jury instruction based upon the trial record  
23 that was made when Sanchez testified.

24           It's the same type of thing with Count Four, in which it  
25 was based on a single text. That was February 7th, 2012, from

1 Mr. Robles to Furminger, which references Sergio in connection  
2 with a portable generator sought by Mr. Robles.

3 And, once again, there's absolutely no evidence that there  
4 was any kind of *quid pro quo* for that. There was no intent  
5 nor any agreement explicit or implied by Mr. Furminger to be  
6 influenced in his official acts or duties.

7 And to the extent that that topic was even touched upon,  
8 my recollection of the testimony -- and I can try to get you  
9 some transcripts, but I believe Sergio Sanchez said it was  
10 happening in his head.

11 So I think that we have a serious Rule 29 issue on Three  
12 and Four.

13 **MR. HEMANN:** So without going back -- and I have not  
14 gone back and read all Mr. Sanchez's testimony yet; and I can  
15 by tomorrow.

16 But, first of all, it's "devised or intended to devise."  
17 And it's a scheme. It's an ongoing course of conduct that  
18 Mr. Sanchez -- who was a sophisticated enough businessman that  
19 he had a \$100,000 BMW -- was giving discounted and free stuff  
20 to two police officers who, in his view, were protecting him  
21 by allowing him to continue to sell stolen equipment on the  
22 street corner several blocks from Mission Station over a long  
23 period of time.

24 That, we believe, is sufficient. And whether he was paid,  
25 not paid, or got a discount for an obviously stolen GPS seems

1 to be not -- not germane.

2 So I think that, again, I --

3 **THE COURT:** Well, what I'm going to do on the Rule 29  
4 is take it under submission on that. I'm going to let it go  
5 to the jury.

6 And, obviously, Mr. Getz, you are free to make all the  
7 arguments you're making now in front of the jury, plus more.

8 **MR. GETZ:** No, but I don't want to have to.

9 **THE COURT:** No, no, I understand that. But you have  
10 to.

11 **MR. GETZ:** Well --

12 **THE COURT:** I mean, you have to unless I ultimately  
13 agree with your position. But, after all, if the jury acquits  
14 on those counts or one of those counts you don't have to make  
15 the argument.

16 **MR. GETZ:** Well, I --

17 **THE COURT:** There are two ways you can win.

18 **MR. GETZ:** I want to win earlier.

19 **THE COURT:** Well, that's just not going to happen.

20 **MR. GETZ:** Well, can I just buttress my presentation  
21 with one other observation?

22 I thought ten minutes ago the government argued, with  
23 connection to Count One and Two, the wire fraud, that one had  
24 to look at the individual conduct to find whether or not there  
25 was a scheme. And now the government appears to be arguing on

1 Three and Four, which is also wire fraud, that there was a  
2 scheme and let's not look at the individual conduct.

3 So I don't think that argument -- maybe I'm not hearing it  
4 correctly, but that doesn't sound consistent to me.

5 So that's why we thought the Rule 29 on Counts Three and  
6 Four had some true vitality. We didn't make that argument on  
7 rule -- on Counts One and Two. We made it on Counts Three and  
8 Four because -- we made that argument about the jury  
9 instruction on Counts Three and Four. But --

10 **MR. HEMANN:** The --

11 **MR. GETZ:** I'm sorry, go ahead.

12 **MR. HEMANN:** No, I'm sorry.

13 **MR. GETZ:** No, that's fine.

14 **MR. HEMANN:** The purpose of alleging particular wire  
15 transmissions is because what the statute focuses on, in terms  
16 of the offense conduct, is the interstate wire in furtherance  
17 of the scheme.

18 All of the conduct, all of the relevant conduct goes to  
19 whether or not a scheme existed. And the *mens rea*, if you  
20 will, is the devising of a scheme to defraud. And so,  
21 obviously, both the individual wire transactions are --

22 **THE COURT:** I think so.

23 **MR. HEMANN:** Okay.

24 **THE COURT:** Are appropriate. The only question is --  
25 that's right. I mean, I agree with your analysis. However,

1 you know, I've not had an opportunity to review Sergio's  
2 testimony.

3 I don't know whether -- I accept what Mr. Getz has said  
4 about it. But what I think he has said about it is that the  
5 testimony is contradictory on that issue; that, at one point,  
6 which was on an earlier occasion, he said that he thought the  
7 GPS was stolen, and on a second occasion he said that it  
8 wasn't.

9 But it's not whether it's stolen or not. It's whether it  
10 was actually given for fair market value or whether it  
11 consisted of either a bribe -- a bribe, I guess, for more  
12 lenient treatment.

13 There's a lot of evidence in the record that he expected  
14 leniency or was at least hopeful of leniency for a variety of  
15 reasons. And so the record is replete with that.

16 And Mr. Getz isn't arguing that. He's arguing that the  
17 specific Count Three and Count Four there's insufficient  
18 evidence from which one could conclude that those particular  
19 items were not given to Mr. Furminger at fair market value.  
20 Or, in the alternative, that they weren't -- well, wait.

21 Fair market value. I'm just trying to figure out whether  
22 it makes any difference whether they were stolen or not. I  
23 don't think so.

24

25 **MR. HEMANN:** I don't --

1           **THE COURT:** They could be honestly obtained, and sold  
2 at a discount.

3           **MR. HEMANN:** Sure.

4           **THE COURT:** But it would be -- that may have some  
5 variance to what the fair market value is, but --

6           **MR. HEMANN:** Well, the importance of the "stolen"  
7 element is that -- that he was allowed to continue to do this  
8 business. That goes to the need for protection.

9           **THE COURT:** Yes. But, I mean, it's not just these  
10 two items.

11           **MR. HEMANN:** Oh, not at all.

12           **THE COURT:** In other words, in other words, if you're  
13 selling items -- you're dealing in some stolen merchandise, A,  
14 B, C and D. Then I comes across a GPS.

15           The GPS, not stolen, I give to you at less than fair  
16 market value. And that's the consideration, that's the *quid*  
17 *pro quo* of not arresting you on 1, 2, 3, 4, 5.

18           It's a larger -- that's why the scheme is of significance,  
19 in addition to what the individual items are.

20           Nevertheless, defense is entitled to argue that Count 3  
21 and Count 4 were not sold, or given, or whatever it is, at  
22 less than fair market value. I think that's a defense in the  
23 case, I would think.

24           And to that, Mr. Getz says the testimony is inconclusive.

25           **MR. GETZ:** Well, I was trying to go further, and I

1 was trying to say that the evidence does not show a course of  
2 conduct of favors and gifts flowing to Mr. Furminger in  
3 exchange for a pattern of official acts favorable to the  
4 donor.

5 I'm saying there's no evidence showing that Mr. Furminger  
6 got these gifts, and that Sergio Sanchez got official acts.  
7 So that's why I say the Rule 29 is worth more than a look.

8 **THE COURT:** Okay, I'm going to turn to this tomorrow,  
9 after everybody has had an opportunity to look at it.

10 **MR. GETZ:** That's fine.

11 **MS. CAFFESE:** Your Honor, may I say, I made that  
12 Rule 29 motion on behalf of Mr. Robles, also. But  
13 specifically as to these two counts, 3 and 4, the evidence as  
14 to Officer Robles is not inconclusive. There are three vital  
15 pieces of evidence that came in.

16 One, that Sergio Sanchez gave a pair of sunglasses to  
17 Mr. Robles when he had left Mission Station to go into the  
18 motorcycle detail. And those sunglasses were not stolen.

19 Secondly, there was a laptop that apparently Mister --  
20 Officer Robles purchased from Mr. Sanchez when he apparently  
21 left Mission Station.

22 And thirdly, in 2012, beyond the scope of this indictment,  
23 there is a text message between Sergeant Furminger and Officer  
24 Robles which references a pitching machine -- excuse me, a  
25 generator that Officer Robles is looking for, for the pitching



1 machine.

2 So, I would suggest to the Court that the evidence is not  
3 inconclusive as to Officer Robles. There were absolutely no  
4 kickbacks.

5 Mr. Sanchez said that Officer Robles always treated him  
6 fairly, with respect; that there was never any --

7 **THE COURT:** But Mr. Robles is not arresting him for  
8 selling stolen merchandise. Is there any -- you are saying  
9 there is no evidence that Mr. Robles knew that any of the  
10 merchandise was stolen?

11 **MS. CAFFESE:** There is no evidence of that. In fact,  
12 the other evidence -- that as the Court pointed out, it really  
13 doesn't even matter if it's stolen or not.

14 But the fourth thing that I would like to emphasize, if  
15 we're talking about selling property, is that Sergio Sanchez  
16 testified that 40 percent of his business dealt with property  
17 that was not stolen.

18 And we're dealing with three potential issues -- three  
19 potential products. Some sunglasses that Sergio gives a man  
20 that he respects, Officer Robles. And --

21 **THE COURT:** The evidence is ambiguous as to that.  
22 Isn't it?

23 **MS. CAFFESE:** Well, I don't believe it is,  
24 Your Honor.

25 **THE COURT:** He says it could have been stolen, could

1 have not been stolen. He said 50/50. Okay, so that's -- I  
2 don't know whether that's ambiguous evidence, but it's -- it's  
3 -- it's -- it is what it is. I don't know whether it could  
4 sustain a conviction.

5 **MS. CAFFESE:** Clearly, there were no kickbacks.  
6 There was no bribery and kickbacks. And that was not the  
7 evidence, at all.

8 **THE COURT:** Well, you said the glasses. Was there  
9 anything else, in addition to the glasses?

10 **MS. CAFFESE:** There was a laptop which I believe  
11 Mr. Sanchez says that he sold Officer Robles, some time before  
12 or after --

13 **THE COURT:** Do we know -- do we have any idea what  
14 the price was or what the value was?

15 **MS. CAFFESE:** Well -- purchased --

16 **THE COURT:** It doesn't have to come from you. I'm  
17 just saying: Is there evidence in the Record as to what -- he  
18 says "I sold the laptop to Officer Robles"?

19 **MR. HEMANN:** I believe the evidence was that it was  
20 discounted. I believe that's the word. But --

21 **THE COURT:** Discounted.

22 **MR. HEMANN:** I would have to check.

23 **THE COURT:** Okay. But -- okay. That -- that carries  
24 it a little bit. I am not sure it carries it across the  
25 finish line.

1 Nobody suggests -- do we know whether -- I mean, merchants  
2 sell discounted merchandise all the time. That doesn't mean  
3 it's stolen.

4 **MR. HEMANN:** So, Your Honor, I would go back to this  
5 -- first of all, it's within the scope, the time scope of  
6 Counts 3 and 4. It would address Ms. Caffese's first  
7 argument, which is December '08 through August '12, as alleged  
8 in the indictment. So, that is within the time scope.

9 **THE COURT:** All right.

10 **MR. HEMANN:** All of these three incidents.

11 **THE COURT:** Okay.

12 **MR. HEMANN:** Second of all, Mr. Robles was still a  
13 San Francisco Police Officer, although he drove around on a  
14 motorcycle, rather than -- so that is not relevant.

15 **THE COURT:** Okay.

16 **MR. HEMANN:** Finally, the three -- the three items  
17 that Mr. Sanchez testified about were the sunglasses, the  
18 computer, and the generator for the pitching machine, which  
19 was obviously going to be discounted, you can infer from --  
20 infer much from the texts, because Mr. Furminger and  
21 Mr. Robles were complaining or observing about the cost of one  
22 of these items at Best Buy or Costco, or wherever you buy  
23 them. And you could get a good one from Sergio. Why go  
24 there? Not as expensive.

25 So, you're talking about getting things for less money

1 from Mr. Robles -- from Mr. Sanchez.

2 **THE COURT:** Yeah, but Sergio dealt with both -- I  
3 mean, the evidence is not contradicted, is it, that he dealt  
4 with stolen and not-stolen merchandise. He dealt with both  
5 legitimate merchandise, and illegitimate merchandise.

6 Is the evidence that?

7 **MS. CAFFESE:** Yes.

8 **MR. HEMANN:** The evidence --

9 **MS. CAFFESE:** Well, excuse me. I believe so.

10 **MR. HEMANN:** Yes. There's evidence that he stole --  
11 that he sold both stolen and non-stolen.

12 **THE COURT:** Okay.

13 **MR. HEMANN:** But our case is not that -- again, as  
14 the Court observed a moment ago, this is -- what matters is  
15 that he was in the business of selling stolen property on the  
16 corner.

17 And in response to Ms. Caffese's question to Cesar  
18 Hernandez, Cesar Hernandez said everybody knew that he was  
19 selling stolen goods on the corner.

20 **THE COURT:** Okay, but let's say that I'm a cop, and I  
21 know that Smith is selling stolen merchandise, and not selling  
22 stolen merchandise. And, Smith has all sorts of merchandise.

23 So I go up to Smith, and I say, "Do you have a computer?"  
24 Or, "Do you have X, or Y?"

25 And he says, "Yes, I do. And here is the price."

1           **MR. HEMANN:** (Nods head)

2           **THE COURT:** Okay. Now, at some point, depending on  
3 what the price is, I think you can -- a reasonable inference  
4 would be that it's stolen.

5           But, we don't have any of that. That's not what the  
6 evidence is. The evidence is: I'm going to give you a  
7 discount on the merchandise.

8           I have to believe that he gives a discount on every piece  
9 of merchandise he has. His overhead -- his overhead is  
10 slightly low, you know. He's in the business where he doesn't  
11 actually have much of an overhead, other than oil and gas.  
12 And, that would bespeak a discount, in and of itself.

13           I doubt if he pays a business tax. I doubt if he pays,  
14 even, for his parking. Hopefully he doesn't park in a  
15 handicapped zone. But be that as it may, you would expect him  
16 to sell discounted merchandise.

17           Now, you can say, since he deals with stolen merchandise,  
18 that's -- in and of itself, that's enough. But I don't know  
19 if it's enough if the record really is that he deals with  
20 honest merchandise as well as -- or, you know, dishonest --  
21 that's what I call it -- stolen; not stolen.

22           So my concern is that -- that with this count, I do have  
23 some real concerns. I have concerns that -- that the evidence  
24 is inadequate to make a finding that -- that the specific  
25 items of merchandise were stolen.

1           **MR. HEMANN:** Your Honor, I -- I don't think there's  
2 any requirement at all that the specific items that were  
3 transferred were stolen.

4           **THE COURT:** Really?

5           **MR. HEMANN:** Really. I don't believe that.

6           **THE COURT:** So if I go into a store -- I mean, I go  
7 to Sergio, and he sells me everything, but he -- he honestly  
8 came by it, although I know he does deal in stolen  
9 merchandise, but honestly came by these three items of  
10 merchandise, and sold me these three items at the fair market  
11 value of merchandise that could be sold by an individual who  
12 is selling out of the trunk of his car.

13           So, I got no benefit that I wouldn't get from anybody else  
14 selling out of the trunk of their car, and --

15           (Off-the-Record discussion between counsel)

16           **THE COURT:** And is it either bribery or kickback --  
17 no, no, I mean is it -- yeah. Is it bribery or a kickback?

18           **MR. HEMANN:** Bribery or kickback.

19           **THE COURT:** -- that I paid fair market value for  
20 these items, in exchange for not booking him for selling  
21 stolen merchandise, which these items don't represent?

22           **MR. HEMANN:** So, first of all, the evidence with  
23 regard to the sunglasses are ambiguous. I believe that the  
24 evidence with regard to the computer is discounted. And the  
25 evidence with regard to the generator is below fair market

1 value.

2 Okay? That's what I believe the evidence with regard to  
3 these three things is.

4 **THE COURT:** Well, we'll look at it.

5 **MR. HEMANN:** So, there is an effort to obtain things  
6 more cheaply. And the issue is: When a hypothetical person  
7 is doing that, the hypothetical person here has to be a  
8 San Francisco Police Officer.

9 **THE COURT:** No; I'm a cop and I do it.

10 **MR. HEMANN:** Okay. And you are buying from -- by the  
11 way, Officer Vargas testified very clearly that Mr. Robles and  
12 Mister --

13 **MR. VILLAZOR:** (Inaudible)

14 **MR. HEMANN:** -- Mr. Robles -- we're focusing on  
15 Mr. Robles now -- and Mr. Sanchez were doing business  
16 together.

17 Mr. Vargas testified very clearly that they knew, because  
18 they had discussed that Mr. Sanchez was in the business of  
19 selling stolen goods.

20 And Mr. Sanchez says, "I was doing it, I was engaging in  
21 these commercial transactions with these police officers in  
22 order to allow my..." you know, to, stay in business.

23 And, in a --

24 **THE COURT:** So you're saying even if he sold these  
25 people honest goods --

1           **MR. HEMANN:** At a discount.

2           **THE COURT:** Well, honest goods at his fair market  
3 value and so forth, he then -- he then -- that can proceed as  
4 an honest-services violation, because they didn't bring him  
5 in.

6           In other words, he could refuse to do business with them.  
7 Which he didn't do. So since he's doing business, the only  
8 reason he's doing business with cops is not -- is in order to  
9 avoid apprehension. Or prosecution.

10           **MR. HEMANN:** Correct. It's one thing for police  
11 officers to know that a fence is operating on the street.  
12 It's one thing for them to know, and to turn the other cheek.

13           It's another thing altogether for police officers to then  
14 engage in commerce --

15           **THE COURT:** Okay.

16           **MR. HEMANN:** -- in that fence's business.

17           **THE COURT:** (Inaudible) that argument. In other  
18 words, it makes no difference if they got some discount  
19 greater than what the general-public police officer would get,  
20 no other member of the department gets, not knowing the things  
21 that these people knew.

22           Not knowing what the Defendant knew, allegedly, not  
23 knowing that, if they were simply a cop on the beat, or a cop  
24 comes into town or cops in town -- no, they all live outside  
25 town. A cop comes into town, and says, "Look, I want to buy X



1 or Y," and goes to see this guy on Mission and 17th or  
2 whatever it was, 20th?

3 **MR. HEMANN:** Twentieth and Capp.

4 **THE COURT:** Twentieth and Capp. Twentieth and Capp.  
5 And, and, buys something. That person would not be prosecuted  
6 absent his knowledge that this person is operating as a fence.

7 Or, putting it another way, to allow an individual to --  
8 to continue in business, and actually to support the business,  
9 even though you may be supporting an honest portion of the  
10 business, but allowing him to go unapprehended for things that  
11 you already know about is a violation of honest services.

12 Is that the argument?

13 **MR. HEMANN:** Knowledge plus power plus commerce is  
14 what we have. They knew what he was doing. They were sworn  
15 to uphold the law. And yet, they engaged in commerce --

16 **THE COURT:** Okay. So tomorrow, can you identify the  
17 sections of the transcript and so forth, so we're rather  
18 specific on this?

19 **MR. HEMANN:** We would, Your Honor.

20 **THE COURT:** And, I will not rule on this right now.

21 The difference between the conspiracy against civil rights  
22 and the conspiracy on the honest services --

23 **MS. CAFFESE:** Your Honor, I'm sorry, but before we  
24 move on to the next --

25 **THE COURT:** Sure.

1           **MS. CAFFESE:** I did submit some changes to  
2 Instruction 23, which, 8.124. If I could just --

3           (Off-the-Record discussion between counsel)

4           **THE COURT:** What are we looking at?

5           **MS. CAFFESE:** Instruction 23 put --

6           **THE COURT:** Okay, but you are asking again, the  
7 specific intent.

8           **MS. CAFFESE:** And, I understand the Court's ruling on  
9 that.

10          **THE COURT:** I'm not going to give it as specific  
11 intent.

12          **MS. CAFFESE:** I understand that. But I also,  
13 actually, added on Line 14 --

14          **THE COURT:** Pardon me?

15          **MS. CAFFESE:** On Line 14, the third element  
16 (As read):

17                "After specific intent to defraud, that is, the  
18 intent to deceive or cheat..."

19          **THE COURT:** Okay.

20          **MR. HEMANN:** That's fine, Your Honor, with the  
21 government.

22          **THE COURT:** Pardon me?

23          **MR. HEMANN:** I think that's --

24          **MS. CAFFESE:** The government's agreeing.

25          **MR. HEMANN:** Oh, I'm sorry. I'm on the wrong one.

1 (Off-the-Record discussion between counsel)

2 **MR. HEMANN:** It's actually the intent -- I mean, it's  
3 the intent to defraud or deprive the City and County of  
4 San Francisco and the San Francisco Police Department the  
5 right to honest services.

6 And that's -- unlike Counts 1 and 2 where that intent to  
7 defraud was not elsewhere defined, here, the intent to defraud  
8 is outlined on the next page, in another instruction.

9 **THE COURT:** I'm not going to give, as Counsel  
10 suggests.

11 **MS. CAFFESE:** And the only other item on that page,  
12 Judge, is Line 21. The addition of "also" after -- "Counts 1  
13 and 2..."

14 "...instructions I gave you regarding wire  
15 transmissions for Counts 1 and 2 also apply to Counts  
16 3 and 4."

17 (Off-the-Record discussion between the Court and Law  
18 Clerk)

19 **THE COURT:** Well, okay, I'm going to -- I am going to  
20 give you a proposed instruction that I think does a couple of  
21 things.

22 Number one, it takes the general-conspiracy instruction  
23 and puts it in the front, and part of the first conspiracy  
24 that's alleged.

25 Secondly, it -- it also distinguishes, as you will see

1 throughout this, that there is a different conspiracy  
2 instruction with respect to the civil-rights violation. You  
3 don't have to prove an overt act, whereas you do for the  
4 others.

5 So why don't you just take a look at it tonight, and then  
6 we'll address it tomorrow. Okay?

7 **MS. CAFFESE:** Thank Your Honor.

8 **THE COURT:** So, you're reserving your objections.

9 **MS. CAFFESE:** (Nods head)

10 **THE COURT:** To tomorrow.

11 I'm going to give the vicarious liability instruction.

12 The civil rights, I'm giving it without the overt  
13 instruction -- overt act, but I'll give it to you.

14 **MS. CAFFESE:** And Your Honor, before you move on?

15 **THE COURT:** Yes.

16 **MS. CAFFESE:** Thank you. I have added on, added to  
17 that particular instruction, at Line 7. If the Court has a  
18 copy.

19 **THE COURT:** Line 7. Thanks.

20 Go ahead.

21 **MS. CAFFESE:** Okay.

22 **THE COURT:** "Beginning on or about February 19," I  
23 think that's right. I think I'm giving that.

24 **MR. VILLAZOR:** That matches the indictment,  
25 Your Honor.

1           **THE COURT:** Yes. February 19th, ending on or about  
2 August '12. Okay, yes. That's accepted.

3           So, here's a question. Do we have to show -- does the  
4 government have the burden of showing that it -- that the  
5 police department received \$10,000 in a particular year?

6           **MR. VILLAZOR:** Yes. Yes, Your Honor. That was set  
7 forth in our stipulation. In excess of \$10,000.

8           **THE COURT:** Okay, so it's there, somewhere. Right?

9           **MR. HEMANN:** It's in the Record. It was in the --

10          **THE COURT:** It's in the Record. I forgot -- I mean,  
11 you read all these stipulations.

12          Did it say: In Year X, they received \$10,000?

13          **MR. HEMANN:** It was in -- in 2009, they got money  
14 from some Department of Justice program, and in 2010 they got  
15 money from some --

16          **THE COURT:** And in each year, they received more than  
17 10,000?

18          **MR. HEMANN:** Oh, it was hundreds --

19          **MR. VILLAZOR:** Millions --

20          **THE COURT:** Well, I'm just asking. Not a billion,  
21 but is it in the Record?

22          **MR. HEMANN:** Yes.

23          **MR. VILLAZOR:** In the stipulation, Your Honor.

24          **THE COURT:** That's all I need to know. That's all I  
25 need --

1           **MS. CAFFESE:** I did actually have one. Are we on  
2 Form 27?

3           **THE COURT:** Pardon?

4           **MS. CAFFESE:** If we're on 27, Your Honor, 8.23?

5           **THE COURT:** Well, we're not quite there. There's the  
6 conspiracy -- the Pinkerton charge which you are asking that  
7 it be given in connection with Count 7. The government is.

8           **MR. HEMANN:** Yes.

9           **MR. VILLAZOR:** Yes, Your Honor.

10          **THE COURT:** That's fine. Count 7 is fine.

11          **MS. CAFFESE:** We're actually asking that it be given  
12 for 5, 6 and 9.

13          **THE COURT:** The Pinkerton charge? You're requesting?  
14 First time I've heard the Defendant request it.

15          **MS. CAFFESE:** Let me -- yeah. I'll withdraw that.  
16 Excuse me.

17          **THE COURT:** Okay. I mean, you know, the government  
18 can request it.

19          **MS. CAFFESE:** I understand.

20          **THE COURT:** You can request anything, okay.

21 Count 7, aiding and abetting. I just want to make sure  
22 that the aiding-and-abetting instruction goes only --

23          **MR. HEMANN:** Correct.

24          **THE COURT:** -- to Count 7.

25          **MR. HEMANN:** That's correct, Your Honor.

1           **MR. VILLAZOR:** Yes, Your Honor.

2           **THE COURT:** Now we come to the interesting thing in  
3 Count 8.

4           **MR. GETZ:** May I interrupt? I had a request for Jury  
5 Instruction No. 30.

6           **THE COURT:** Sorry?

7           **MR. GETZ:** We had a request that unanimity be a part  
8 of Jury Instruction No. 30, which I think was Count 7. The  
9 Court said "Count 8," but Count 7 was --

10           **THE COURT:** Well, wait a minute. For Count 7, you  
11 want unanimity. Let me just take a look. Let me just take a  
12 look. Count 7. Unanimity.

13           Yes, you are asking for that. I think you're right. In  
14 other words, it would read:

15                 "Third, during that one-year period, the Defendant  
16 embezzled, stole, obtained by fraud, converted or  
17 intentionally misapplied property, with each of you  
18 agreeing which items of property was/were embezzled,  
19 stolen, obtained by fraud, converted or intentionally  
20 misapplied."

21           Well, maybe I'd only use the singular. In other words,  
22 let's say they all agreed that A was done. They don't have to  
23 agree to B, C, D, and E.

24           **MR. HEMANN:** We would not object to a unanimity  
25 charge the way the Court first articulated it. I think that

1 having that laid out is not necessary; potentially confusing,  
2 because it suggests that they need to agree unanimously with  
3 regard to each of them.

4 **THE COURT:** Well, that's what -- that is true. So,  
5 that's why the words ought to be "with each of you agreeing at  
6 least as to..." Something like that.

7 **MR. HEMANN:** Correct.

8 **THE COURT:** I mean, not quite --

9 **MR. HEMANN:** We would agree with that.

10 **THE COURT:** -- well written, but it's got -- you're  
11 entitled to unanimity. That's the concept. So, let's put it  
12 in the words. I'll put in the words.

13 But the unanimity you're entitled to is that 12 people  
14 have to agree as to one of the enumerated items. Only one.  
15 Okay?

16 **MR. GETZ:** That's fine.

17 **THE COURT:** Okay. So that will be true with Count 7;  
18 it's true with Count 8.

19 Count 9, it's not true. They don't have to agree whether  
20 it's heroin or crystal or, God forbid, marijuana. They don't  
21 have to agree to any of them. They just have to agree to one  
22 of them.

23 Okay. Let's see if there's a few other things --

24 **MR. HEMANN:** Count 8, the Court was going to look at.

25 **THE COURT:** Sorry. Count 8 is the extortion. Well,



1 I think that's -- I mean, there's unanimity in Count 8. There  
2 has to be unanimity as to which item.

3 **MR. GETZ:** That's our request.

4 **THE COURT:** Well, isn't that Mr. Getz's point? That:  
5 "For Count 8, in order to find the Defendant guilty,  
6 each of you must agree that at least one of the  
7 following items of property was one that the  
8 Defendant knew he was not entitled to receive, and  
9 further knew was given in return for taking some  
10 official action..."

11 Then I'm adding the words:

12 "...or refraining from taking some official action,  
13 with each of you agreeing as to which item so  
14 qualifies."

15 Obviously, the refraining from action -- I don't know why  
16 the government didn't say anything. The refraining from  
17 action is not arresting the guy. The action is not arresting.

18 Taking official action is not -- is taking -- I, mean you  
19 could -- you know, you could say not doing something is doing  
20 something.

21 But, but the problem is that it adds an ambiguity, unless  
22 you explain that there are two ways to take official action.  
23 Doing something, and not doing something.

24 **MR. HEMANN:** I agree that there should be unanimity  
25 as to that. That -- the doing something or not doing

1 something. I'm not sure --

2 **THE COURT:** Oh, no, I don't know --

3 **MR. HEMANN:** -- whether there needs to be unanimity  
4 as to -- if one juror thinks it was the sunglasses, and  
5 another juror thinks it was the bottle of tequila that caused  
6 the person -- that's not -- that's where unanimity is not  
7 required.

8 **THE COURT:** That's where the rubber meets the road  
9 here, whatever it is. Because that's a good question. One  
10 that occurred to me.

11 If six jurors think that X was stolen, or the subject of  
12 an improper act, and six jurors think it was something else,  
13 but they all 12 think that indeed, indeed, it was -- they all  
14 agree that he got something which caused him to act, then, is  
15 that enough?

16 To which I recommend that the parties read the case of  
17 *United States versus Payseno*, P-A-Y-S-E-N-O, 782 F.2d, 832.  
18 Judge Reinhardt -- no, actually, it was a judge on the panel,  
19 Judge Strand wrote it. And it seems to suggest -- it seems to  
20 suggest that you have to give -- there has to be unanimity as  
21 to the -- as to the item.

22 I don't know; my mind isn't made up on this. So I would  
23 appreciate some additional authority or argument.

24 **MR. VILLAZOR:** Your Honor, I would add, we did see  
25 this case cited by Mr. Getz. And it footnotes -- excuse me --

1 on Page 835, the problem with the -- with the jury  
2 instruction.

3 There were three specific extortion schemes with three  
4 different victims. That's different than what's charged in  
5 the extortion count here. The only person here is S.S.,  
6 Sergio Sanchez. There's a specific time charged in Count 8,  
7 which is August, 2011, to August, 2012.

8 So, this case -- that was the problem with that case, is  
9 that there were three victims, three separate schemes. We  
10 don't think that's a problem in this case, as charged in the  
11 indictment, with that one-year time period. And the only  
12 person is Sergio Sanchez, S.S., as mentioned in the  
13 indictment.

14 **THE COURT:** So you see, that distinguishes the  
15 *Payseno* case.

16 Do you have any authority on this?

17 **MR. HEMANN:** We can provide it to Your Honor by  
18 tomorrow.

19 **THE COURT:** Okay; would you do so? Would you do so?

20 **MR. VILLAZOR:** Yes, Your Honor.

21 **THE COURT:** Thank you.

22 **MR. GETZ:** Just before the Court leaves the topic,  
23 can I make one observation? I also had another comment on  
24 Count 8. And, the model -- the government's No. 32.

25 The Court posed the hypothetical, what if -- I'm using the

1 wrong item, but what if six people thought the GPS fit the  
2 definition of the crime for Count 8, and six people thought it  
3 was the power drill; do we have a unanimous verdict?

4 We don't. Because the six who agreed on the one rejected  
5 the theory of conviction on the other, and vice-versa. So you  
6 would have to have 12 jurors agreeing that it was the drill,  
7 or it was the power tool. Otherwise, you don't have  
8 unanimity.

9 That's the whole basis of our request on that jury  
10 instruction, which is government's 32.

11 **THE COURT:** Well, let me ask this, because I'm always  
12 sort of lost in this area.

13 Twelve people believe that he committed a crime, with six  
14 believing he did it one way, and six believing he did it  
15 another way. And I'm just trying to figure out -- the person  
16 is accused of murder. And they're -- and the defendant is  
17 assaulted with -- or the decedent is assaulted with a gun and  
18 a knife.

19 And, six people believed that the knife was the cause of  
20 death and six people believe it was the gun that was the cause  
21 of death. They -- no one believes that he didn't cause the  
22 death, by violent means. We'll say gun.

23 So you would say -- what's wrong with that analogy?  
24 Because to me, that, of course, makes no sense. That is to  
25 say, the guy committed 187.

1       It makes no sense whether he did it -- unless it's an  
2       enhancement or something like that, but it makes no sense to  
3       say that he didn't commit homicide. Only, six people believe  
4       he did it with the knife, and the other six people believe he  
5       did it with a gun.

6               **MR. GETZ:** Well, I think --

7               **THE COURT:** So, like, for example -- to wit, a deadly  
8       weapon.

9               **MR. GETZ:** Right.

10              **THE COURT:** Okay?

11       And there's both a knife involved, and a gun involved, and  
12       the parties -- and the jury can't figure out whether it was  
13       the knife that caused -- that ultimately led to his death, or  
14       the gun.

15              **MR. GETZ:** I think it's a causation example that the  
16       Court gave. Because in the Court's example, because there was  
17       only one decedent and only one perpetrator, the causation is  
18       irrelevant. Because whether it was a knife or a gun makes no  
19       difference.

20       A better analogy for the Court would be if the Court said:  
21       We have one decedent, and two defendants; who pulled the  
22       trigger? Is it Defendant A that killed him, or Defendant B?  
23       We know it's only one bullet, but we don't know which one  
24       pulled the trigger.

25       Here, you have one power drill, one bottle of perfume, one

1 GPS. And the question is: Was there an extortion on any  
2 particular item?

3 And, if the answer has to be yes, then we have to have the  
4 jury agree on what item was extorted, in order to make that  
5 crime stick.

6 You don't have that in the Court's hypothetical, because  
7 in the Court's hypothetical, we know who the perpetrator is;  
8 we know who the decedent is. And it doesn't matter if it was  
9 the knife or the gun.

10 But, it does matter here. Did he extort it when he took  
11 the perfume?

12 **THE COURT:** You succeeded in --

13 **MR. VILLAZOR:** Your Honor.

14 **THE COURT:** -- torpedoing my --

15 **MR. VILLAZOR:** Well, if I could offer perhaps a  
16 better hypothetical --

17 **THE COURT:** Better, better than mine?

18 **MR. VILLAZOR:** -- set forth in *Payseno*, and actually,  
19 the Ninth Circuit faulted the District Court because there  
20 were three separate distinct crimes. And, the -- the extorted  
21 acts were repeated telephone calls. Repeated telephone calls  
22 to Victim 1, repeated telephone calls to Victim 2 and Victim  
23 3.

24 And essentially what Mr. Getz is asking is they would have  
25 to decide -- that jury would have to decide on which telephone

1 call it was.

2 That's not the case. It's the extortion scheme from  
3 August 2011 to August 2012. Doesn't matter whether it's the  
4 GPS or the perfume or the tequila, or anything like that.  
5 It's the extortive acts, taken together.

6 **MR. GETZ:** I would --

7 **THE COURT:** So, in other words, in other words, if I  
8 -- let's make sure I got it.

9 So you're saying that in the *Payseno* case, you had  
10 different people running different schemes. And it was  
11 important for the jury to identify which person --

12 **MR. VILLAZOR:** Correct.

13 **THE COURT:** -- was the guilty person. Not unlike  
14 Mr. Getz's example of where you have two defendants in a  
15 homicide; he dies of one bullet; who fired the weapon?

16 **MR. VILLAZOR:** Correct.

17 **THE COURT:** You are saying that here, in this case,  
18 you have one defendant, I guess, on this one.

19 **MR. VILLAZOR:** Yeah. Mr. Furminger.

20 **THE COURT:** Mr. Furminger. And six items.

21 And, if 12 people agree that Mr. Furminger extorted this,  
22 but they have a disagreement as to which items were  
23 specifically extorted.

24 And that's not -- that's a -- that's more of an argument  
25 over means than it is over criminal liability. Whereas, in

1 the *Payseno* case, it's not an argument about means; it's an  
2 argument about criminal liability.

3 Have I got that right?

4 **MR. VILLAZOR:** I think so.

5 **THE COURT:** You can tell me I haven't.

6 **MR. HEMANN:** No; that's our view, Your Honor.

7 **MR. VILLAZOR:** Yeah.

8 **THE COURT:** What?

9 **MR. HEMANN:** That's our view.

10 **THE COURT:** Well, I'm just trying to state what I  
11 think your view is.

12 **MR. HEMANN:** Yes.

13 **MR. VILLAZOR:** Yes, Your Honor.

14 **THE COURT:** Okay. Well, I'll think about it.

15 **MR. GETZ:** And may I also just augment my request  
16 under Count 8, with a comment on the section in government's  
17 No. 32?

18 Starting at Line 13 going to Line 18, it starts off "In  
19 the case of a public official..." and ends up "...satisfying  
20 the statute."

21 Does the Court have that?

22 **THE COURT:** We're talking about which instruction?

23 **MR. GETZ:** On -- we're still on 32. And I'm -- I  
24 would point out to the Court --

25 **MR. VILLAZOR:** It's for Count 8, Your Honor.



1           **MR. GETZ:** For Count 8, the Jury Instruction No. 32  
2 that the government's offering. They give the four elements.

3           **THE COURT:** Yeah.

4           **MR. GETZ:** And then, they go on to say, "In the case  
5 of a public official who obtains property, the government does  
6 not..." and it goes on.

7           That, that whole paragraph's an argument. That's not a  
8 jury instruction. That shouldn't be there.

9           **THE COURT:** I think it should be. I -- okay. As to  
10 that, I overrule the objection. I think it's important.

11           A jury doesn't know, and wouldn't know, and might very  
12 well think that a promise has to be explicit; it has to be  
13 done contemporaneously with it.

14           You know, they may start to treat this like -- like  
15 first-year law students, rather than jurors. I think it's  
16 important to give something like that.

17           Okay. Your objection is noted.

18           **MR. GETZ:** (Nods head)

19           **THE COURT:** So, I'll try to get out -- which is a  
20 nice way of saying that I think my law clerk will try to get  
21 out -- a -- a set of proposed instructions tonight. It will  
22 be e-filed as "Proposed Instructions."

23           And then tomorrow, after the jury is dismissed, let's  
24 address it. Because I think it's important that you have  
25 them -- that we settle them before you start to construct your

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1 argument.

2 **MS. CAFFESE:** Yes. Thank you, Your Honor.

3 **MR. HEMANN:** Thank you very much, Your Honor.

4 **THE COURT:** See you at 9:00 tomorrow.

5 **MR. VILLAZOR:** Thank you, Your Honor.

6 **THE COURT:** Thank you very much.

7 (Proceedings concluded)

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**CERTIFICATE OF REPORTERS**

I, BELLE BALL, and I, KATHERINE SULLIVAN, Official Reporters for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball 

Monday, November 24, 2014

Belle Ball, CSR 8785, CRR, RDR

  
/s/ Katherine Sullivan

Monday, November 24, 2014

Katherine Sullivan, CSR 5812, CRR, RMR